

(31,722)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 999

PAN AMERICAN PETROLEUM & TRANSPORT
COMPANY AND PAN AMERICAN PETROLEUM
COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

VOLUME III

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No. 4651

**United States
Circuit Court of Appeals**

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

**PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM AND TRANSPORT COM-
PANY, a Corporation,**

Appellants and Cross-Appellees,

vs.

**UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.**

VOLUME III.

(Pages 1025 to 1471, Inclusive.)

**Upon Appeal and Cross-Appeal from the United States
District Court for the Southern District of
California, Northern Division.**

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(Testimony of John Keeler Robison.)

Following the transmitting of that letter of November 29, 1922, witness telephoned to the New York office of the Pan American Company, and asked them to send someone down to Washington, and promptly conferences began, some of which took place in the witness' office, where there were present as [645—562] representatives of the Pan American Company, Mr. Cotter and Mr. Anderson, and sometimes Mr. Cotter alone, at which conferences nothing important took place. There were conferences, of course, between witness and Mr. Denby, but he did not confer with the representatives of the company, nor with the representatives of the Interior Department; most of the conferences took place in the interior department, in the office of the Director of the Bureau of Mines, there being present Admiral Robison, Dr. Bain, sometimes with and sometimes without Mr. Ambrose, Mr. Cotter, sometimes with and sometimes without Mr. Anderson. Witness had one or two or perhaps more conferences with Secretary Fall; there was one conference at the Bureau of Mines, where Mr. Doheny was present; between November 29 or 30 and December 11, there were conferences on this subject about twice a day, at but one of which was Mr. Doheny present, and that was in the office of the Director of the Bureau of Mines, Dr. Bain; that conference was toward the end of the negotiations.

It was in the early part of these negotiations that the matter of the leasing of the entire unleased portion of Naval Reserve No. 1, came up, at which

(Testimony of John Keeler Robison.)

witness said on that subject that he "thought that we could well afford to let the whole of it in; that it would probably increase the benefits that we would get out of the deal"; witness is referring to No. 1 reserve, he means; the witness said this to Dr. Bain, and to Mr. Cotter. These conferences were a continuous set of negotiations, where witness was trying to get as many of the advantages, indicated partially in his memorandum of October 27th, Exhibit "R-4," for the benefit of the Navy, as he could, and he was trying to accomplish that by means of identifying the interests of the Pan American Company with those of the Government, making it to the interests of the Pan American Company that the Navy's [646—563] interests would be protected; he was trying to get all he could for the Navy out of it.

By the statement in his memorandum of October 27, that "the foregoing proposition is attractive to us. It does not measure by any means all that we can get," witness meant that while Mr. Doheny had made an offer, witness thought he could get more out of him than he had offered; in the memorandum he uses this phrase: "It seems to me probable that we can secure from the Pan American Company not less than 4,000,000 barrels of storage in connection with this particular development and that the cost to the Navy," etc.; in that connection, Mr. Doheny had originally offered 1,000,000 barrels of storage, as the memorandum notes, and the witness had in mind obtaining storage for 4,000,000; that

(Testimony of John Keeler Robison.)

does not refer to storage at Pearl Harbor, but storage within the United States, of which Mr. Doheny had offered one million barrels at San Francisco or other Pacific Coast points, California tidewater, to be available for naval use on demand; maintenance cost to be paid by his company; cost of delivery to tankers to be paid by his company; cost of transportation from the reserves to tidewater to be paid by the company. That was what he started out with and he had in that connection a demand that he be given security of oil supply in an increase of his leased areas in No. 1, but at that time, as witness has said, Mr. Doheny made no claim that he should get it all; he did claim that there be some increase; the areas which were mentioned, the witness does not now remember, but they were less than were finally leased, he knows. At that time, according to witness' information, the Pan American Company did not have a refinery on the Pacific Coast; he knows now that they have a refinery, built subsequent to the making of the December 11, 1922, contract. As regards bunkering of ships on the Pacific [647—564] Coast, at that time, the Pan American did not have terminal facilities on the Pacific Coast, but they now have. The four million barrels in storage referred to in witness' memorandum of October 27, 1922, is exclusive of the storage in the Navy's own tanks at Pearl Harbor; at that time, October 27, witness was not talking about Pearl Harbor at all; Mr. Doheny said that they could get storage for a million barrels on

(Testimony of John Keeler Robison.)

this coast, and witness suggested to him the very small added cost to his company and the relatively great advantage to the Navy of setting aside upon demand for naval use a considerable portion of his company's tankage on the Atlantic; witness urged to Mr. Doheny that where with low cost to him great advantage could be given to the Navy, it was wise to include that in any agreement "that we made."

There was talked of in detail the matter relating to the Navy's right to purchase from the Pan American at ten per cent below the market price petroleum products at such time as the Navy wanted same. In the conferences between November 29 and June 11, 1922, there were two subjects that were discussed most, one of them was Pearl Harbor and the other was royalty. [648—565]

The discussion as to Pearl Harbor covered, in substance, these points: "First, we wanted it. Then from Mr. Cotter as to what security they got. 'You are asking us to advance many millions without other security than the flow of oil from the ground.' 'Yes'; I admitted it; that that was what I wanted. And on the subject of royalty I wanted as big a royalty as I could get and urged from the beginning that our royalties should be made high, and cited to them that this was a magnificent opportunity for them to develop a large property by the most economical commercial methods, indeed an unexampld opportunity that enabled them to get the oil out of the ground with the least cost of collecting pipes and with the best location of oil wells; that

(Testimony of John Keeler Robison.)

the property's complete development could be less expensive to them than any other method of handling the property; that the advantages that were involved to them in the ownership of the leasehold to a single large productive property was a great asset to them and that we should get the benefit of it in the form of increased royalties above commercial standards; that the risk—I minimized it, as I said yesterday, and said that the good faith of the country would be involved and had never failed." Anderson wasn't in most of this, Cotter was; Bain and Ambrose were present at some of these conferences and heard these arguments that witness made; indeed Dr. Bain furnished witness with some of the arguments; he gave witness the information as to the value to the producer of the large area, which witness suspected but which Dr. Bain knew. When Mr. Cotter pointed out that his company would be advancing many millions of dollars and would have to depend upon the chances of production in Naval Reserve No. 1, Admiral Robison told him if there wasn't enough oil there, even if the company had no legal claim against the Government for the actual facilities furnished the Government, he had no doubt that the Government would repay the company but if it didn't there was an almighty small chance that the company would not get enough oil out of the reserve to pay for the Pearl Harbor job; the witness said to Cotter that the whole Pearl Harbor job wasn't going to involve a maximum advanced on his part exceeding \$8,000,000, that is, the

(Testimony of John Keeler Robison.)

maximum indebtedness of the Government to the Pan American Company would at no one time prior to the completion of the Pearl Harbor job exceed \$8,000,000 in witness' opinion, which is his opinion now and was then. [649—566] At one time in the conference which witness has spoken of, when Mr. Doheny was present, witness made this statement and Mr. Doheny said it would be worth \$100,000 to him if that could be proved; that it was going to be nearer \$13,000,000. Mr. Anderson took part in the last conference when Mr. Doheny was present, witness having learned from Dr. Bain or Mr. Ambrose and from Mr. Cotter of the demands of Anderson with respect to what the royalty should be, that he was demanding the regulation royalties of from 12½ to 20 per cent. When Mr. Cotter made known to witness that that was Mr. Anderson's demand witness replied that that didn't interest him any, that he was going to get more than commercial royalties out of that or they were not going to get it; witness made a study of the subject and reduced it to a memorandum form which memorandum is in his files; prior to the time of the conference, which witness has referred to, when Mr. Doheny, Mr. Anderson, Dr. Bain, Mr. Cotter, Mr. Ambrose and Admiral Robison were all present, an agreement had been reached that all witness had asked, aside from royalties, was going to be given; before this conference witness had stuck out for a minimum of one-seventh and a maximum of 35 per cent, as the royalties to be reserved in the lease, and he so stated

(Testimony of John Keeler Robison.)

at the conference. Dr. Bain said he had prepared a compromise schedule, which he had submitted to the Secretary of the Interior; witness went to Secretary Fall who said that he had written a letter to Mr. Doheny setting forth this as the best basis that could be agreed upon and that he expected to get from Mr. Doheny an acceptance of that. Admiral Robison said he wanted one-seventh royalty for a minimum and Mr. Fall said "Go ahead and see if you can get it out of the old man; I can't." Admiral Robison then went down to Dr. Bain's office and there had the conference at which the witness brought out all of the arguments he could in favor of increasing that royalty, setting forth his idea of the enormous advantage that it was to a concern to have such an assured supply of oil, the justification that it meant to them, and the commercial advantages as witness saw them; he was seeing their advantages big for the moment and talking the Navy's small; and he urged that the Government get greater royalties than those set forth in that so-called compromise schedule. Witness does not remember all of the talk but he does remember the way it was concluded: He turned around to Mr. Doheny finally and appealed to [650—567] him; witness had previously been assured by Bain and Ambrose that this compromise adjustment was materially better than "we could otherwise obtain and was an excellent bargain for us, quite irrespective of the casual advantages, such as that of 4,000,000 barrels" in storage, and witness appealed to Mr.

(Testimony of John Keeler Robison.)

Doheny to make it bring a royalty of one-seventh for a minimum. Mr. Doheny said he had gone as far as he thought he could. Admiral Robison said he wanted to be sure "that you don't beat us, or bilk us, or some word like that." Mr. Doheny responded that if there was any talk of that kind this is off right now and he said he had gone his limit; he did not state this quietly and witness was convinced he meant what he said and once more he thought he had better act quickly, so he said: "We will accept this proposition, then"; that is the way the final agreement was arrived at.

Witness prepared a memorandum, which was produced from the Navy files, dated December 8, 1922, and testifies that that is a memorandum prepared at the top of which there is a note reading: "Statement by Admiral Robison for his use in presenting case to Secretary of the Navy." He took up the subject of that memorandum with the Secretary of the Navy prior to the conference which he has just testified to; his idea was to obtain from the Secretary authority to come to an agreement; this memorandum stated the case as he saw it at that time, presented the arguments as he presented them in the subsequent conference of the same day, and after he had given it to the Secretary the final instructions that witness received from Mr. Denby were to go ahead and do the best he could; he went over this memorandum with the Secretary and then received those instructions. The memorandum thus identified and referred to by Admiral Robison

was thereupon offered and received in evidence as Defendants' Exhibit "V4," and reads as follows:
[651—568]

DEFENDANTS' EXHIBIT "V4."

"8 December, 1922.

Memorandum Concerning Royalties on New Lease
to Pan American Petroleum Company in California Naval Reserves.

The value of this new lease is at least one and one-half million based upon the oral statement of Mr. Doheny that he would give that sum for the lease and based upon payment of standard royalties.

Therefore, the total return to the Navy from the new lease should approximate the return to the Government—either in the form of increased royalties or in the form of special facilities—of at least one and one-half million dollars.

The special facilities agreed to by the Pan American Company are in all cases paid for by the Government with interest. Except for the risk involved to the lessee in furnishing these facilities without other hope of payment than the royalty oils, it would appear that his risk involves a loan to the Government at 5%. With current rates of Government loans under $4\frac{1}{2}\%$, it is difficult to see any advantage to the Government other than the acceptance of the risk by the lessee of the absence of sufficient oil in the ground on the leased territory to repay the loans. I say 'loan' because the con-

struction and filling of storage facilities by the lessee prior to payment therefor by the Government amounts to a loan.

As to the risk involved: Current Naval royalties are amounting to over \$1,000,000 a year even with the current extremely low prices for oil to date there has been practically no overexpenditure on the part of the Pan American Company in connection with the erection of the Pearl Harbor storage.

Expenditures to date exceed \$1,000,000. This million dollars should certainly be a reduction from the total risk involved. In addition, the period of construction for the remaining storage will exceed two years, being by the terms of the proposed contract, two years from the date that complete plans and specifications are delivered to the contractor. During these two years additional development of the leased property is bound to increase Government royalties and thus operate as a reduction in net advances by the contractor to the Government.

There is always to be considered the probability that the current price for oil will be materially increased in a short time.

Authentic estimates of the gross quantity of oil in the ground on the area to be leased include a minimum of 69,000,000 barrels by the representative of the Bureau of Mines, an estimate of 75,000,000 barrels by Mr. Doheny himself. Under the system of standard royalties the average royalty to the Government is estimated to be about $14\frac{1}{2}\%$. If estimates are anything like sound, the obtainable

royalty oil will considerably exceed in amount that required to extinguish all Government liabilities to the contractor under the terms of the proposed contract. [652—569]

It appears to me from the estimates that we have made that the maximum advances by the contractor for the account of the Government will occur at the time the new storage at Pearl Harbor is being completed filled, namely, about the first of March, 1925. As the gross advances up to that time should be less than \$13,000,000—probably about \$12,000,000—the value of royalty oil delivered to the contractor before that time, taking into account the initial production from the new lease and assuming that the new lease is granted as of date 1 January, 1923, should amount to about \$5,000,000. The accruing royalties after 1 March, 1925 should extinguish the Government's obligation at a rate exceeding \$2,000,000 per annum. All this based upon standard royalties. This figure, of course, gradually becoming less and less as the production from the lease fails.

The productive life of the lease should be not less than fifteen years, perhaps as much as thirty years.

It must not be forgotten that the terms of the lease convert all gas royalties heretofore covered directly in the Treasury and not available for extinguishing the obligation to the Pan American Petroleum Company to the benefit of the Navy Department and of the contractor, nor should it be forgotten that cer-

tain of the areas to be leased are known to be rich in gas. This feature materially increases the value of the lease to the lessee and it materially decreases the risk to the lessee in the advances he is making for the account of the Navy Department by constructing and filling storages.

Under all these circumstances it would appear that with standard royalties the Government will receive a very small return on account of the premium value of the entire lease. I estimate this return as worth perhaps \$1,000,000. It, therefore, seems that the royalties to be paid by the lessee should somewhat exceed the standard royalties. The increase in royalties above the standard should be sufficient to accomplish a present worth of at least \$500,000, perhaps \$1,000,000. With the average return from standard royalties accepted as $14\frac{1}{2}\%$ and with the total oil content taken as 70,000,000 barrels, the increase above standard royalties and with crude oil taken at the average basis of \$1 a barrel in the field, the total increase in royalties should amount to from $1\frac{1}{2}\%$ to 3% above the standard royalties.

If the foregoing analysis is anything near correct the Government's interests can be fully protected by securing as a minimum royalty $1/7$ instead of the standard $1/8$. Further by increasing the maximum royalties for the larger average wells to a figure as much as 30% as has heretofore been recommended by the Secretary of the Interior." [653—570]

(Testimony of John Keeler Robison.)

By the reference to standard royalties in the foregoing memorandum the witness meant the Interior Department's regulation royalties of $12\frac{1}{2}$ to 20 per cent. His reference in the memorandum to "Authentic estimates of the gross quantity of oil in the ground on the area to be leased" refers to an estimate of the oil content furnished witness by Mr. Ambrose; witness does not remember whether that was for the eastern half or for the whole reserve; he thinks it was for that portion of the reserve that the lessee was authorized to drill, that is his present recollection but he does not know; the estimate of 75,000,000 barrels referred to in the memorandum was given him by Mr. Doheny himself in a conversation which witness thinks was some time in the month of November; the reference in the memorandum to Mr. Doheny's statement to the effect that the value of this new lease is at least one and one-half million dollars based upon standard, or Interior Department regulation, royalties, was based upon a statement which witness thinks was made him by Mr. Cotter; he cannot recall what was said on that subject even though his memory be refreshed by the memorandum. The statement in the memorandum that "the average royalty to the Government," based upon the standard royalties, "is estimated to be about $14\frac{1}{2}$ per cent," is based upon information that came from Dr. Bain or Mr. Ambrose.

Prior to the time that the agreement was made on the schedule of royalties that was to go into the

(Testimony of John Keeler Robison.)

December 11th lease Admiral Robison and Dr. Bain or Mr. Ambrose had gone over the difference between what the Government could get from that schedule and what the Government could expect from the standard royalty schedule, and the one that was accepted was shown to be the better.

Witness received Secretary Fall's letter of December 8, 1922 (Exhibit "F3"), but was unable to state when he received it and he cannot now determine the relative chronology of the different events of that day with absolute exactness; it is his best recollection that he received this letter the first thing in the morning, that he proceeded thereafter to the formulation of the last above-quoted memorandum, and then he went to the Secretary of the Navy, and after that to the Bureau of Mines, in the afternoon, and had the conference that he has told of, but he is not certain that that is [654—571] the exact order of events; it is his best recollection. After the conference witness wrote and sent to Secretary Fall a letter which he now identifies dated December 9, 1922, being Exhibit "G3."

As regards the draft of the contract of December 11th, and of the lease bearing the same date, that was drawn up in the Bureau of Mines and was ready, roughly, on December 8th; witness got a copy of it on the 9th and went over it in detail and at length with the Secretary of the Navy, and passed it over to the Judge Advocate-General for study and any necessary revision; there were several changes suggested by the Judge Advocate-

(Testimony of John Keeler Robison.)

General of the Navy in the verbiage of the contract that appeared to that office to better safeguard the naval interests. Witness talked with Mr. Neagle, the Solicitor of the Navy, as well as to the Judge Advocate-General himself, regarding that draft. Admiral Robison identified as having been written by him letter dated December 11, 1922, which is Exhibit "G" to defendants' Exhibit "PP," the latter being the stipulation regarding the actions taken in the office of the Judge Advocate-General. Prior to the time that the draft of the contract was submitted to the Judge Advocate-General and after the witness had the conference in Director Bain's office on the afternoon of December 8, 1922, about which he has testified, he reported to Secretary Denby on the subject, telling the Secretary on either the night of the 8th or the morning of the 9th that he had to accept the terms that began with 12½ per cent and went up to 35 per cent, the terms that are in the lease; the Secretary asked the witness if it was the best he could get and the witness replied in the affirmative and stated that he had tried hard and the Secretary said, "All right."

Mr. J. C. Anderson of the Pan American Company was present throughout the December 8th conference and at that time said he didn't want the contract at any price; he said he could get along with it if the royalties did not exceed the Interior Department regulation royalties, 12½ to 20 per cent, but in regard to the royalties Mr. Doheny him-

(Testimony of John Keeler Robison.)

self said he would agree to, Anderson said he didn't want the contract with them.

Admiral Robison was present when Mr. Denby executed the contract [655—572] and lease of December 11, 1922; the final draft of that contract had been drawn up in the Interior Department; witness does not remember whether he was present when Mr. Doheny on behalf of the Pan American Company signed that contract and lease, he didn't pay much attention to that, the only man whose signature he did pay attention to was Mr. Denby and he cannot say now whether the others signed in his presence or not. When Secretary Denby signed these papers there were present, in addition to Admiral Robison, Mr. Cotter and Mr. Doheny; witness had received the final drafts to present to Secretary Denby for signature from Dr. Bain and he personally took the contract and lease from the Interior Department to the Navy Department accompanied, he thinks, by Mr. Ambrose, as well as by Mr. Doheny and Mr. Cotter. At the time when the contract and lease of December 11, 1922, were presented to Secretary Denby for signature the Secretary asked the witness whether the papers had in them all the changes that "we put in"; Admiral Robison showed Mr. Denby where they had been included in the final draft "as we had directed" in the Judge Advocate-General's office, showed Mr. Denby that they were all in. The Secretary inquired if there was anything else in the contract except as agreed and Admiral Robison assured him that

(Testimony of John Keeler Robison.)

it was identical with what he had been over with the Admiral in detail. The Secretary said then that it was all ready for signature and he might as well finish the job and he signed it; he glanced over it, before signing but didn't spend the time to read it thoroughly at that time. On this occasion witness introduced Mr. Doheny and Mr. Cotter to Secretary Denby; Mr. Denby and Mr. Doheny said they had never met before; the conversation was just an ordinary polite conversation, all of which the witness does not remember, but the Secretary said to Mr. Doheny, in substance, "You have got a big job to do and you have got a fine piece of property," and Mr. Doheny replied, "We have got what I hope will be a fine piece of property, but we certainly have got a big job to do." [656—573]

Thereupon there was offered and received in evidence communication dated Bureau of Engineering, Washington, December 21, 1922, addressed to the Chief of Naval Operations, which was read in evidence as Defendants' Exhibit "W4," and is as follows:

DEFENDANTS' EXHIBIT "W4."

"1. On 11 December, 1922, a contract was made with the Pan American Petroleum & Transport Company which provides for storage of 1,000,000 barrels of fuel oil available until expiration of the contract, for use by the Navy at Los Angeles, California. This storage will be without charge to the Government. When the royalty oil from Naval

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Petroleum Reserves Nos. 1 and 2 have completely paid for the Pearl Harbor project, this Los Angeles storage is to be immediately filled by the contractor with fuel oil. From this oil, the contractor will bunker Government vessels at cost. It is further provided that the contractor shall transport to his refinery or to tidewater at Los Angeles all royalty oil from Naval Petroleum Reserves Nos. 1 and 2 at no cost to the Government for pipe-line charges.

J. K. ROBISON,
Chief of Bureau."

Thereupon there was offered in evidence, as Defendants' Exhibit "K4," letter dated at the Bureau of Mines, Washington, December 30, 1922, addressed to Admiral Robison, reading as follows:

DEFENDANTS' EXHIBIT "X4."

"My dear Admiral:

You will find attached to this letter figures on the average daily production per well on Government and patented land in and adjacent to naval petroleum reserve No. 1, which were prepared by our field engineers in Bakersfield, Calif., from actual production figures. The engineers in preparing these data were asked to include production from patented land as well as from Government land in order that we might have a better idea of the probable productivity of the undrilled portion of the eastern half of this reserve as well as the productivity of producing wells on Government land.

I believe that in considering royalty rates to be applied to the eastern half of the reserve you will be most interested in the right-hand column of the first sheet attached, which extends over the past four years of the entire structure, and therefore, gives a better idea as to what may be expected from the undrilled portion as well as the drilled portion of the eastern half of this reserve.

The second sheet was prepared in the Washington office to give a comparison of two royalty scales on the actual production figures from the western portion of reserve No. 1 and immediately adjacent to it. The royalty scales used were the regulation royalty and a special scale used in the contract of December 11, 1922, with the Pan American Petroleum & Transport Co. In brief these figures show:

	Barrels per day.
Average production per well on structure for past 47 months.....	481.7
Average royalty under regulation royalty scale	91.5
Average royalty under Pan American roy- alty scale	108.8

Cordially yours,

H. FOSTER BAIN,
Director." [657—574]

There was then offered and received in evidence as Defendants' Exhibit "Y4," letter dated Bureau of Mines, January 4, 1923, addressed to Admiral Robison, and reading:

DEFENDANTS' EXHIBIT "Y4."

"My dear Admiral:

This is just to clear up a possible doubt in the wording of the contract as to the effect of including gas and gasoline from old leases in the product turned over by the Navy to the Pan American, thus hastening payment. Will you please have the Secretary sign three copies and keep one for yourself to go with your copy of the contract.

Sincerely yours,

H. FOSTER BAIN,
Director."

And as Exhibit "Z4" there was received in evidence letter dated January 4, 1923, from Admiral Robison to Director Bain, reading:

DEFENDANTS' EXHIBIT "Z4."

"My dear Director:

I am returning herewith the original and one copy of the letter of the Pan American Petroleum & Transport Co. of December 29, 1922, supplementing the contract entered into by this company and the Government under date of December 11, 1922. The original and two carbon copies of this letter have been signed by the Secretary of the Navy; one carbon copy is being retained and will be attached to the Navy Department's copy of the contract mentioned.

Very respectfully,

J. K. ROBISON,
Engineer in Chief, U. S. Navy,
Chief of Bureau."

(Testimony of John Keeler Robison.)

An Exhibit "A5," letter dated January 4, 1923, from Dr. Bain to Admiral Robison was received in evidence, and is as follows:

DEFENDANTS' EXHIBIT "A5."

"My dear Admiral:

This letter is an acknowledgment of the receipt of the original and one carbon copy of the letter of the Pan American Petroleum & Transport Co., December 29, 1922, supplementing the contract entered into by this company and the Government on December 11, 1922, which were sent to this office after having received the approval of the Secretary of the Navy. One copy will be attached to the Interior Department's copy of the contract and the other delivered to the Pan American Petroleum & Transport Co.

Cordially,

H. FOSTER BAIN,
Director." [658—575]

In January, 1923, Admiral Robison told Mr. Cotter that the time was coming when the Navy wanted the approximately 1,500,000 barrels of oil referred to in the April 25, 1922, contract delivered in the tanks, but that "We didn't want to pay the full price for it if we could get it for less. The market price of oil at that time was \$1.00 at tidewater, California. He urged to me that the contract allowed them to charge us the posted market price. I stated to him Mr. Doheny's promise to me at the interview that I had with him originally, and said

(Testimony of John Keeler Robison.)

that I thought whether that was included in the contract or not that he would give us that oil as cheaply as he could get it"; after further discussion and some telegraphic correspondence between Mr. Cotter and officers of his company on the Pacific Coast Cotter advised that the company had found it was possible for them to obtain fuel oil at 90 cents a barrel; the Bureau of Supplies and Accounts of the Navy, which purchases the oil for current use, found by investigation that 90 cents was a lower price than that Bureau could obtain the oil for, and that $46\frac{2}{3}$ cents per barrel was slightly below the then prevailing freight rate from the Pacific Coast to Pearl Harbor; the Bureau of Supplies and Accounts found that they could not arrange for the supply at that time of approximately 1,500,000 barrels of fuel oil, delivered in the tanks at Pearl Harbor, at $\$1.36\frac{2}{3}$ a barrel; this result was reported to Secretary Denby and the papers resulting in directions to the Pan American Company to furnish the oil at that price at that time resulted as shown by Defendants' Exhibits "P3," "Q3" and "R3," which witness identifies. From that time on Admiral Robison had no connection with the operations at Pearl Harbor under the two contracts in suit, Admiral Gregory of the Bureau of Yards and Docks had charge of that. The oil delivered in the tanks at Pearl Harbor by the Pan American Company under the April 25, 1922, contract was tested and passed by Navy inspectors.

(Testimony of John Keeler Robison.)

The Navy has at this time 1,000,000 barrels of storage on the Pacific Coast, 3,000,000 barrels of oil in storage at designated places on the Atlantic Coast as provided in the contract of December 11, 1922; official records of the Department show this.

Admiral Robison remembers the proposition made to the Government by the American Oil Engineering Corporation's letter of August 27, 1921, Plaintiff's [659—576] Exhibit 55. The only time he saw that communication was in the Interior Department; he had a conversation with Mr. Fall about it; he read the letter over and laughed at the proposition; he understood it then as he understands it now; the proposition was one under which all expenses were to be paid by the Government and amounted to a request that the contractor be given one-eighth of the naval reserve; when he saw that proposition in the Interior Department he just laughed, talked about it to Mr. Fall just as he talks about it now, and that ended it.

The appeal made in November, 1921, by Ramsey, assignee of the United Midway Company, and by the Pan American Company to the Secretary of the Interior for a reduction of royalties provided in their July, 1921, leases was brought to Admiral Robison's attention by Mr. Fall who consulted with him regarding the Navy's views on that subject; witness said then that if these lessees were losing money he was sorry but he did not see that it was any of the Government's concern; as regards any recommendation on the subject that the witness

(Testimony of John Keeler Robison.)

made, the original leases provided for a 55½ royalty; the production of these wells was very much below what had been hoped and expected; it was represented by the lessees that they were losing money under this contract and, seriously, that they wanted the royalties reduced; witness objected to that and his objection was sustained; but in relief certain added areas were given them; witness agreed to this, referred the matter to Mr. Denby, and he said he thought it was all right, and witness spoke to Mr. Fall and to Dr. Bain; it was only upon the basis that the leasing of the remainder of Section 1 was necessary for our protection that these relief leases were entered into.

In the early part of the year 1924 Admiral Robison attended conferences in the Navy Department at which was discussed the subject of the ways and means of completing the Pearl Harbor project, conferences being held with the Acting Secretary of the Navy, Mr. Roosevelt, and Mr. Cotter of the Pan American Company, and he presumed with other officers of the Navy, but he does not recall them at the moment. At this time no action was taken, Acting Secretary Roosevelt saying that it was vitally important that the thing be completed; that it was very desirable from the point of view of the Navy Department that it be completed, that the work in progress be prosecuted immediately to completion. [660—577]

(Testimony of John Keeler Robison.)

Cross-examination.

On cross-examination Admiral Robison testified: The witness thinks that he saw a letter to Secretary Fall containing an application by the Pan American Company for relief from this 55½% royalty. The witness dismissed it right away. He said to Secretary Fall that he thought it ought not to be done but at that same time Secretary Fall did not say what he intended to do. The witness talked to Secretary Fall before he went west to Three Rivers about it. There wasn't anything done there that wasn't done with the witness' knowledge. Witness could not determine without reference to the written records whether Secretary Fall told him what Secretary Fall was going to do before leaving for the west. Witness does not think that he told Secretary Fall before the latter left that they could go ahead with No. 1—the additional leases to the Pan American and Midway, but thinks he told the Acting Secretary Finney and that it was Secretary Finney that communicated to him what Secretary Fall thought ought to be done about it,—but it may have been Secretary Fall.

Witness did not suggest that if there was any other leasing to be done in the case of No. 1 section, it ought to be done by competitive bidding. Witness thought that if the Pan [661—578] American Company had bid 55% and made a loss of that they would have to stand by their bargain. The idea of giving them another lease to bring down their royalties right alongside the first one was

(Testimony of John Keeler Robison.)

that it didn't bring down their royalties on the existing lease, but gave them an additional area at a lower royalty rate. The purpose was to give them relief and they alone could be relieved by that. Witness meant not that if they had made a bad bid they ought to stand by it, but ought to be relieved from it, but that if it could be done to the Government's advantage they ought to be relieved by indirection if they could not be relieved directly. The terms on which the additional part of No. 1 was leased, as witness was advised by Dr. Bain at the time, were, in view of the low production from the wells already brought in in the strip leases, about as good as the Government could hope to get from anybody. In view of the fact that the leases already made in No. 1 section were to the same parties that were taking up the remainder of the area, they could handle the remainder of the area to greater advantage from the point of view of the cost of production than any other concern. What would be to their advantage would not cost the Government anything.

Dr. Bain told the witness that it was necessary to make that lease anyway for the protection of the Reserve from drainage. As to where the drainage would come from, that was a matter of opinion. The witness went into that question then. He realized that the Pan American Company had No. 6 right outside of the Reserve there. They have not drilled any wells on No. 1 since they got it; witness thinks that the Government's protection in No. 1

(Testimony of John Keeler Robison.)

section is incomplete. Witness had no authority and had been relieved of all responsibility in connection with these Reserve matters for some time—approximately from the time Government counsel were appointed in these suits. Up to that time witness did not force the Pan American Company to drill any [662—579] additional wells for the protection of No. 1—up to February 28, 1924.

At the time that that matter was put up to the witness, he did not know and does not know of any financial transaction between Mr. Fall and Mr. Doheny, and had not at that time any hearsay on the subject.

The witness took up the matter on October 8 or 9 immediately upon his appointment and saw Secretary Fall first on October 9. He thinks that they didn't get in the conference on that day to the question of building storage with royalty oil. He thinks that they got to that question within a week and that the matter went on progressively from that time. He had the principal contemporaneous advice of Dr. Bain and Mr. Ambrose on the question of the condition of the reserve and what they would require.

The letter of October 25th refers to a conference of October 22d; to the best of witness' recollection, Dr. Bain and Secretary Fall were there—he doesn't think there was anyone else. If the records in Washington indicate that Dr. Bain did not arrive in Washington until Saturday afternoon, October 22, and he so testified in this case, he probably

(Testimony of John Keeler Robison.)

couldn't have been at that conference. The witness was quite sure that he had seen both Dr. Bain and Mr. Ambrose between the 8th and the 22d. He is not as sure of that as he is of anything in this matter, but is quite sure that he did see them during those two weeks. He never thought about any doubt of their being there that two weeks until the morning of the cross-examination.

“Q. You told us in a good deal of detail what you said to them and what they said to you that lead up to the letter of October 25th, did you not?

A. Yes. Or through Secretary Fall. And I am quite sure I saw them during that time. Of course it is possible I did not see anyone in the Interior Department except Secretary Fall.” [663—580]

As a result of these conferences it was determined so far as the witness was concerned, subject to Secretary Denby's approval, that matters which were set forth in the letter of October 25th should be done, and as the result of the conferences that the witness had late in October, it was determined that No. 2 reserve could not be saved and should be leased up; that No. 3 should be set aside for the moment and nothing decided about it and nothing done until further information was had; that as to No. 1 certain strip leases were required, and that those would be a strip lease in the northern part of Section 2, a strip lease in 34 at the eastern edge, and certain strip leases around section 36 in the

(Testimony of John Keeler Robison.)

center of the reserve, and that bids should be taken for those. Nothing was said as to whether they should be advertised or how bids should be obtained. Witness did not understand whether or not bidding was had by the ordinary forms of competitive bidding. The manner of securing tenders for public land is a matter and manner with which witness is quite unfamiliar but he understood that the methods pursued were those common in handling such matters in the Interior Department.

Witness was advised that the Pan American Company had made the best bid for the strip on the northern part of Section 2, but did not ever understand that there had been any bidding for Section 34, the strip on the east part. Something was said to the witness about what is now the Belridge lease—the question of the lease was referred to the witness. The amounts of royalties were stated, and it was recommended that the Navy agree to that lease. This recommendation may have been made by Secretary Fall or by Dr. Bain. To the witness the Interior Department was one person.

It is very difficult for the witness to discriminate for the reason he just gave. The matter was referred by the witness to Secretary Denby, and the witness stated the information he had obtained which was to the effect that the terms of the lease on the east half of the east half of Section 34 were reported to [664—581] be as good as could be obtained, and that the royalties were high. Witness recommended that Secretary Denby approve

(Testimony of John Keeler Robison.)

the lease. The Secretary said, "All right, tell them to go ahead,"—and it was done. That was done orally. The witness understood that they got no bids that were in any degree satisfactory for stripping around Section 36. As to having understood from Dr. Bain that further information had been obtained in dictating that it was unnecessary to lease there at that time—his memorandum of February 7th—that was true in part but in part it was not true, as witness looked upon it. Section 36 at that time was producing, and according to the records as long as witness had charge of the matter, continued to produce large quantities of gas at least. Witness was familiar with the fact that the gas well was not in the oil sands but some 300 feet above, and yet it was gas—it was valuable—and it was the gas of the Government as well as that of the companies operating Section 36. The witness means that he thought he might have to offset the gas that was producing—that is done now. Witness' recollection is that from that time on further leasing in No. 1 was not discussed until the bid came in, and the Pan American requested further leases in 3 and 4 when the question of the making of those leases came up.

With regard to any conference in October, 1921, with Secretary Fall with regard to keeping the matter of these leases and contracts secret, witness' recollection is that there were no leases and contracts or proposed leases and contracts in October, 1921, and that the first suggestion as to secrecy

(Testimony of John Keeler Robison.)

came after the Pearl Harbor job was taken into serious consideration.

Witness remembers counsel's examining witness in a deposition in the case of U. S. vs. Mammoth Oil Company in which witness testified that it was the intention between himself and Secretary Fall that no information should be given out which would state what was being done in full until after these contracts with the Pan American and Mammoth Oil Company had been completed—that [665—582] it was the intention that the public and Congress should not get knowledge of what was being done until it had been in fact done, and that the witness thought that it was in October, 1921, when they originally undertook the work—that Secretary Fall and witness made an agreement that information should not be given out until after this matter was entirely completed.

Witness then stated that his present memory differs from what it was at the time of this deposition; that he did not think there was any agreement in October, 1921, concerning the release of information; that he has not looked up further data but that he thinks that on that matter the agreement to make information public through the Interior Department only after the consummation of the contracts, was reached some time in the spring of 1922 and not in October, 1921. The witness said, "I am of the opinion that I made a mistake in that statement." The witness remembers that counsel calls witness' attention in connection with that tes-

(Testimony of John Keeler Robison.)

timony to a memorandum of C. S. Williams of the Bureau of Operations, and that counsel had asked witness if that memorandum had come before him. Counsel then read from the memorandum as follows:

"On the 4th of November, 1921, (3) the arrangements made with the Interior Department and the Standard Oil Company will undoubtedly operate to allow more steaming by ships of the fleet and will consequently contribute very largely to its efficiency. There may be a certain amount of danger in getting too much publicity, because as soon as it is known what the character of the arrangements are Congress will undoubtedly use those arrangements as a reason for cutting down appropriation for fuel and transportation. If this is done of course the reserves which we so badly need and which we seek to establish will not be established. Furthermore, it is conceivable that the whole project might be met with hostility in certain quarters because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the bill, and in another way it operates to create reserve fuel storage the construction of which has not been specifically authorized by Congress. In view of the foregoing it would seem advisable to close the arrangements as soon as possible without undue publicity."

(Testimony of John Keeler Robison.)

Witness did not recall what his answer was at that time but his present answer is that that memorandum represents the idea of converting the royalty into current use—fuel oil—which the witness opposed. That is what it is talking about. [666—583]

Counsel then read further from the memorandum as follows:

“Furthermore, it is conceivable that the whole project might be met with open hostility in certain quarters because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the bill; and in another way it operates to create reserve fuel storage the construction of which has not been specifically authorized by Congress.”

The witness stated that the last quotation does not refer to fuel oil but that the Williams memorandum says the whole project should be kept as secret as possible. Witness added that he presumed counsel had read the whole of the memorandum—which current use of the fuel the witness objected to. That is the part that increases the appropriation for fuel and transportation. The witness thought at that time that the whole statement as counsel put it as to the policy to be pursued was wise. The memorandum is dated November 4, 1921. It did not refresh witness' recollection as to whether he and Secretary Fall had agreed upon a policy of secrecy before that time. There had been no defi-

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(Testimony of John Keeler Robison.)

nite agreement—the witness and the Secretary had not done anything at that time. It seems to indicate that the witness' previous recollection was more accurate than it was at the time of the cross-examination.

C. S. Williams was a rear admiral and is now president of the Naval War College. The memorandum dated November 4, 1921, was then offered and received in evidence and was marked "U. S. Exhibit No. 259," and is as follows:

PLAINTIFF'S EXHIBIT No. 259.

"NAVY DEPARTMENT.

Office of Naval Operations.

Washington.

P. D. 131-25.

4 November, 1921.

Op.-12 D.

SECRET.

From: Director of War Plans.

To: Chief of Naval Operations.

Subject: Naval Petroleum Reserves.

Reference: (a) Bu. of Eng. 14370-162-1/2 of 29
October, 1921.

1. In reply to Captain Cole's inquiry as to 'what steps are desirable—(a) immediately the information still required from the Interior is received; (b) at various intervals thereafter,' it would seem that no very extensive or definite measures can be recommended at this time. It is considered that the ordinary procedure of [667-584] routine administration would handle the case of Naval Petroleum

Reserves after the preliminary arrangements have been made and the contracts have been secured.

2. It would, of course, be necessary to keep some of the officers in the Department (war plans section, Supplies & Accounts, Yards & Docks and Engineering) informed of the state of fulfillment of the contract, in order that they might know of the resources at their command. Outside of this, the principal action will be in the way of routine administration.

3. The arrangements made with the Interior Department and the Standard Oil Company will undoubtedly operate to allow more steaming by ships of the fleet and will consequently contribute very largely to its efficiency. There may be a certain amount of danger in giving too much publicity, because as soon as it is known what the character of the arrangements are, Congress will undoubtedly use these arrangements as a reason for cutting down appropriation for fuel and transportation. If this is done, of course the reserves which we so badly need, and which we seek to establish, will not be established. Furthermore, it is conceivable that the whole project might be met with open hostility in certain quarters because it operates to some extent to increase appropriations under fuel and transportation beyond what is set down in the bill; and in another way it operates to create reserve fuel storage, the construction of which has not been specifically authorized by Congress. In view of the foregoing it would seem advisable to close the

(Testimony of John Keeler Robison.)

arrangements as soon as possible without undue publicity.

4. It might be desirable from some points of view to inform the Commanders-in-Chief that the limitation on steaming is not expected to be as stringent as was feared, after the provisions of the proposed arrangements became operative, and the reasons therefor. It is believed, however, to be unnecessary to publish abroad or give extensive knowledge to the arrangements which have been made, but rather leave the question of the amount of fuel expenditure to be of purely administrative arrangement handled by the Department, and general instructions to the Commanders-in-Chief without going into details as to the reasons therefor.

C. S. WILLIAMS."

The witness has no record of any conference with Secretary Fall, Mr. Ambrose and Mr. Bain in January, 1922, in connection with No. 1 reserve. He could not remember January, 1922, except as a name. He remembered Dr. Bain's visit to the west of which he had testified yesterday. Witness also remembered that after Dr. Bain and Secretary Fall and Mr. Ambrose had gotten back they had a conference with the witness on No. 3—but the witness does not recall this conference including anything else. Dr. Bain had theretofore reported what he had found in the west and the witness thinks that he did not first report it to witness in the presence of Secretary Fall and Mr. Ambrose in this very conference in late January. Witness did not recall

(Testimony of John Keeler Robison.)

that at that time they [668—585] discussed the question of secrecy as to both the Mammoth contract or what became of the Mammoth contract, and the proposed contract on No. 1 reserve, but they may have done so. Witness did not remember what he said in the Mammoth deposition which was given a couple of months ago. He had gone over his records and documents before he gave that deposition and tried to prepare himself, and presumes that if he had gone over them once more he could again refresh his recollection. He had not gone over these documents in connection with the Mammoth once more before he came into this court. [669—586]

The witness then stated that he testified at page 139 of the Mammoth deposition that the witness, Secretary Fall, Ambrose and Bain, on that day in January, discussed the difficulties in regard to the exchange of oil for storage, and that at that, or some other time they discussed the fact that Congress, or some members of Congress rather, would undoubtedly make trouble if the matter were brought to its attention; that the witness knew that he was practically alone in insisting that if Congress had passed a law that gave the Navy Department definite power, they would be recreant in their trust, if it was wise for them to exercise that power, if they failed to do so, and that to be both wise and silent was exactly the witness' view.

Witness then stated that he could not state the day when this matter was talked over with Fall,

(Testimony of John Keeler Robison.)

Bain and Ambrose together, that it must have been prior to the date that invitations for bids were sent out for the No. 1 Reserve work; that the witness thought that that date was February 15, 1922, and that the witness did not think that he had any other conference with the three gentlemen mentioned between the date late in January, on the eve of the beginning of the month of February, and February 15th. The witness did not think that he and Secretary Fall had any agreement that no information should be given out until after the contracts or leases referred to both Reserves Nos. 1 and 3 had been closed, but they did have an agreement that no information should be given out that would disclose their plans. The witness did not mean the plan to make an exchange contract and the plan to make a lease of No. 3, but meant the quantities in reserve at various points, but was not sure that they did not make it include the general plan for exchange. The agreement was that the Interior Department should make any statement that was to be made on the subject. In the witness' view it was Navy business, of course, but different people are handled different ways and Secretary Fall was of the opinion that the Executive Order made it an Interior Department affair. Witness found that he was able to advance the Navy business best by yielding entirely to the Secretary's view in that matter on all unimportant details. Whether the witness ever had any serious disagreement with Secretary Fall about an important detail depends on what one

(Testimony of John Keeler Robison.)

calls important, but the witness thought that he accomplished the Navy's desires to an extent that he [670—587] had not originally contemplated.

The agreement as to not giving out information was one of the reasons, but not the only reason, why the witness made certain replies to certain letters from members of Congress about these projects.

The witness then stated that he wrote a letter to Congressman Kelley, dated March 24, 1922. This letter was then offered and received in evidence, and marked U. S. Exhibit 260, and is as follows:

U. S. EXHIBIT No. 260.

"24 March, 1922.

My dear Congressman:

On Monday morning Congressman French of the House Appropriations Committee called me on the telephone and requested me to furnish certain information relative to the operation of the Naval Petroleum Reserves.

As you doubtless know by an Executive Order of the President, dated 31 May 1921, the general operation, conservation and administration of the Petroleum Reserves was turned over to the Secretary of the Interior. In compliance with the provisions of this order the Navy Department has come to a general agreement with the Department of the Interior relative to the Reserves and the Secretary of the Navy has designated me as his representative to confer with that Department in all matters relating to the Reserves.

(Testimony of John Keeler Robison.)

In accordance with the general agreement arrived at between the two Departments the Department of the Interior is taking steps to have Naval Petroleum Reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled. It has been further agreed":

At this point the reading was suspended and the witness stated that it had been then agreed to drill up all the balance of No. 2 reserve and that they called that offset wells.

The reading of Exhibit 260 was then resumed, as follows:

"(a) That the amount of drilling with consequent exhaustion of the Reserves shall be kept as low as practicable without risking the depletion of the Reserves by other parties.

(b) That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for Naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

(c) That the equivalent of the royalty oil will be placed in storage at such points as the Navy may designate.

(d) That the Interior Department will exercise its best efforts to obtain for the Navy as large royal-

(Testimony of John Keeler Robison.)

ties and as favorable terms as practicable by public competition or otherwise. [671—588]

(e) That the development of Naval Petroleum Reserve No. 3 is to be undertaken only to protect the Government against depletion of the Reserve by other parties.

In connection with this program it has been estimated that the Navy will obtain by 30 June 1923 royalty oil amounting to 592,200 barrels, which will give an equivalent in fuel oil of 567,400 barrels. For the fiscal year ending 1 July 1923, the royalty oil to be obtained is estimated at 1,350,000 which will give an equivalent in fuel oil of 1,286,460 barrels. Under the terms of the agreement this oil will become a reserve—above ground instead of under ground as now.

The following data with reference to the Naval Petroleum Reserves are submitted for your information:"

Counsel thereupon summarized a portion of the letter as follows:

"Total withdrawn acres, so much; title in United States, acres, so much in each reserve; patented to Southern Pacific, acres so much; to others, acres so much; in litigation, favorable and unfavorable; lands on which leases have been granted; lands not in dispute and not leased; leased wells, and so on. I won't read all of those figures unless someone requires it, as they are very long."

Counsel then resumed reading the letter, Exhibit U. S. 260, as follows:

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(Testimony of John Keeler Robison.)

"As to No. 2 Reserve it is generally admitted that no Reserve as a Reserve now exists and it will be necessary to drill up within a short the entire Reserve. In order to meet this situation the Department of the Interior is granting leases from time to time to various operators to drill these lands on a royalty basis varying from 12½ to 25 per cent depending upon the production of the individual lease.

Trusting that the above information is that which you desire and assuring you that if there is any further information which I can furnish I shall be glad to do so, I am

Very respectfully,

J. K. ROBISON,
Engineer in Chief, U. S. N.
Chief of Bureau.

Hon. P. H. Kelley,
House of Representatives,
Washington, D. C."

The witness then continued: Mr. Kelley was Chairman of the Sub-Committee of the House Committee on Naval Affairs on appropriations at that time. The reason why the witness pointed out in that letter that he had a plan almost at consummation for the exchange of fuel oil for tankage is that the list of figures that counsel omitted was furnished to answer certain specific inquiries addressed to witness by Congressman French. That letter in-

(Testimony of John Keeler Robison.)

cluded what, at the time it was written, [672—589] was believed by witness to be all the information that should become a part of the printed public records at that time in order to accord with the agreed policy as to secrecy.

The witness stated that he remembered having been asked about that letter in his previous deposition and that he had answered that question by saying that Mr. Kelley was Chairman of the Sub-Committee of the House Committee on Appropriations—that counsel had asked witness a question that he had not answered as to why he failed to make the answer to Mr. Kelley full and complete—that there was an agreement between the Secretary of the Interior and the Secretary of the Navy that in matters dealing with the Reserves publicity should come from the Interior Department, because that was where they were being all handled and the place from which the information originated. This agreement was in effect March 24, 1922, and for several months prior thereto. They gave out no information that was original at that time. In that letter witness gave out information that was not as complete as it might have been, and in so doing followed out the agreement that none should be given out only by the Interior Department, because he gave out no information that had not already been made public.

The witness then stated that the foregoing answers were still correct answers to the questions.

The witness then identified a letter dated April

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(Testimony of John Keeler Robison.)

17, 1922, from Congressman N. J. Sinnott, and a copy of the witness' letter of April 19th in reply thereto. These two letters were then offered and received in evidence and were markd U. S. Exhibit 261, and are as follows:

U. S. EXHIBIT No. 261.

“HOUSE OF REPRESENTATIVES,

Committee on Public Lands.

Washington, D. C.

April 17, 1922.

Admiral J. K. Robison,
Chief, Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I would be glad if you would furnish me with the following information regarding the Naval Petroleum Reserves:

(1) The date of withdrawal acts of each of the three Reserves—Nos. 1, 2, and 3.

(2) The total acreage in each of the three Reserves. [673—590]

(3) Total amount of private holdings in each one of the Reserves.

(4) The total acreage disposed of since March 4, 1921.

(5) Total amount of public lands yet available in each of the Reserves for leasing development or other disposition.

(6) What if any disposition has the Depart-

(Testimony of John Keeler Robison.)

ment in contemplation with reference to any of the three Reserves in the immediate future.

(7) Lands embraced in the Sinclair contract regarding the Teapot Dome Reserve No. 3, in Wyoming.

(8) What lands if any remain for leasing or development contracts in the Reserve No. 3, Wyoming.

(9) What lands if any are yet subject to leasing or development contracts in Naval Reserve No. 1, California.

I should also be glad to have any data as to the total amount of oil production from these reserves from the Government lands, and character of any offset wells, depth of wells, thickness of sand, daily production of wells, on lands which are immediately adjacent to the lands offered for lease, the purpose being for leasing and development; any maps or Geological data that may properly go with the lands subject to offer.

With best wishes, I remain

Yours very truly,

/S/ N. J. SINNOTT."

EDB-H.

"219032-690-6-c.

19 April 1922.

My dear Mr. Sinnott:

Your letter of April 17th, requesting certain information regarding the Naval Petroleum Reserves, has reached me and I am very sorry to say that I am unable to give satisfactory answers to several of your questions. As you know, the President, on 31

1070 *Pan American Petroleum Company et al.*

(Testimony of John Keeler Robison.)

May 1921, signed an executive order transferring the care, operation and preservation of these reserves to the Department of the Interior. Since that date I am not able to give all details of what has transpired. However, I submit what information that I have, as follows:

	No. 1	No. 2.	No. 3
(1) Date withdrawn	27 Sept. 1909	27 Sept. 1909	27 Sept. 1909
Withdrawal confirmed.	2 July 1910	2 July 1910	2 July 1910
Date, Naval Reserve	2 Sept. 1912	13 Dec. 1912	30 Apr. 1915
(2) Total acreage	37,760	30,080	9,480

Referring to question (3) et seq. of your letter, I am not able to give this information but it can probably be obtained from the Department of the Interior. [674—591]

Regretting that I am not able to supply more of the information desired, I am

Very sincerely yours,

J. K. ROBISON,

Engineer-in-Chief, U. S. Navy.

Honorable N. J. Sinnott,

House of Representatives,

Washington, D. C.

The witness in saying that he was not able to supply the information meant that he could not have given all of it and should not have given any of it, he thought, in view of the agreement—that he felt bound by the agreement that the information should come from the Interior Department. Some of the questions the witness could have obtained information in detail enough to give him the answers. The witness then identified letter of April 20, to him,

(Testimony of John Keeler Robison.)

from Representative James McClintic, and the letter of April 27th from the witness to him. These two letters were then offered and received in evidence and were marked U. S. Exhibit 262, and are as follows:

U. S. EXHIBIT No. 262.

“HOUSE OF REPRESENTATIVES U. S.

Committee on Naval Affairs,
Washington, D. C.

Rear Admiral John K. Robison,
Bureau of Engineering,
Navy Department,
Washington, D. C.

My dear Admiral Robison:

I shall appreciate the courtesy if you can furnish me with the following information:

Total area of three naval reserves (give answers separately).

Total number of acres and private holdings in each one of the three naval reserves.

Total number of acres that were leased for development since March 4, 1921.

Total number of acres now available for development; contracts leased on royalty basis. [675—592]

Total number of acres in the St. Clair contract on the Tea Pot Dome in the naval reserve No. 3 in Wyoming.

Has the Navy any additional contracts in contem-

1070 *Pan American Petroleum Company et al.*

(Testimony of John Keeler Robison.)

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1072 *Pan American Petroleum Company et al.*

(Testimony of John Keeler Robison.)

plation for development in any one of the three naval reserves?

With my thanks for any trouble you may go to in this connection, I remain

Cordially yours,

JVM:D. /S/ JAMES McCLINTIC."

And the answer of the 22d of April, 1922:

"22 April, 1922.

My dear Mr. McClintic:

Replying to your letter of April 20th, requesting certain information concerning Naval Fuel Reserves, I have to submit the following:

The acreage of the Reserves is as follows:

No. 1—37,760.

No. 2—30,080.

No. 3— 9,480.

The contract recently executed with the Mammoth Oil Company (Mr. H. F. Sinclair, President) covers Reserve No. 3 entirely.

With respect to the remaining questions in your letter, I am sorry to state that I am not in a position to give you accurate data. This matter, as you know, is being handled by the Department of the Interior and I would suggest that inquiry be made of that Department for this data.

Regretting that I am unable to inform you more fully on the subject, I am

Very sincerely yours,

That was signed J. T. Tompkins, Acting Chief of Bureau, the witness' assistant, and he would have signed that in the witness' absence. Witness be-

(Testimony of John Keeler Robison.)

lieved that he told him of the policy not to give information from the Navy Department touching the contract.

In April, 1921, at the time these letters back and forward were in the course of receipt and delivery, the contract with the Pan American Company was in very active execution—the witness was actually working over it at that time, as he has already testified. [676—593]

The press memorandum of April 18th, Exhibit "CC," was then called to the witness' attention by counsel, and witness stated that he did not dictate it; that the words "line of credit" were not his, and that he does not know what it meant, and that he had been wrong in saying that he dictated it. The record shows it to be a fact that it was dictated and given out in the Interior Department. The witness prepared at or about that time a release for the press that he mistook this for in his testimony on the preceding day. The memorandum for the press that witness prepared from the Navy Department went out, he thinks. Witness does not remember testifying on the subject in the Mammoth deposition, but thinks that what he prepared was used.

It is usual in the Navy to advertise for bids for construction of shore stations and portions of shore stations. Some of them may form parts of the war plans and are not given out until they come to advertise them to get contracts for them—even if they do, they are advertised and bidders are asked to

(Testimony of John Keeler Robison.)

bid on them and it is not expected to keep them entirely secret after bids have been asked on them.

After the Navy had started to build something like a tank farm of twenty or thirty tanks up into the air, they do not expect to keep that as a military secret at all. There was no military policy to cause a lease to be kept secret—a lease had nothing to do with work that was going to be put in storage facilities. If there is no reference in the December 11 lease to additional facilities at Pearl Harbor, there was no reason to keep that lease secret at all. The witness was perfectly well aware of the long continued policy of the Navy to advertise for bids on any ordinary construction.

This whole thing was an extraordinary performance taken all together—it was entirely out of the ordinary.

There was a difference at that time between the tankage project at Pearl Harbor as a project physically to be put there and a tankage project at any other base, like Yorktown. The Navy does not want to give out its projects anywhere at any time, and if it is under the necessity to take competitive bids, it must give them out. Usually when the Department goes to [677—594] Congress for leave to start a project of this kind, they go and ask for an appropriation for a particular place and to spend so much money at that place, but they did not do so in this case.

The witness does not know that the Yards and Docks Department asked the Congressional Com-

(Testimony of John Keeler Robison.)

mittee for one million dollars for fuel oil reserve storage at Pearl Harbor in the bill in which this very proviso under which they are operating is contained. From May, 1920, on, witness was on duty in the Navy Department, but had no knowledge of the above fact at the moment. He had heard counsel say it before, but counsel was the only person he had heard it from. Witness never knew the fact that the Navy Department had gone to Congress and asked for this million dollars for this very project, fuel reserve storage. Of course, if Congress had appropriated it, that appropriation would have been spent under the ordinary contract advertised in the ordinary way.

The witness had discussed over and over again with Doctor Bain, Secretary Fall and others in the Interior Department, the fact that in order to make this contract, they would have to make it without cash, that they had no cash to spend on it, and that if it were done, it would have to be done in some way that would avoid the receipt of cash and the payment out of cash. The witness knew very well and said to those gentlemen that if the royalty oil was sold, the proceeds thereof had to go into the U. S. Treasury as miscellaneous receipts, and explained to them that if this happened, it could not be gotten out except by appropriation by the Congress. He had also told them that a large sum had already gone into the Treasury as miscellaneous receipts which could not be made available until Congress appropriated it. Secretary Fall's letter of July

(Testimony of John Keeler Robison.)

had suggested a method of utilizing that royalty oil; but when the witness suggested the Pearl Harbor project that involved the provision of a complete tank farm, to the best of the witness' recollection, Secretary Fall did say that he questioned the propriety under the law of doing that. The witness told him that witness had authority to store the oil and that nobody could store liquid without a container. Secretary Fall did not show the witness the letter of July 23d—he had written a letter of July something or other, 1921—he did not show it to witness but the latter had it in his files. The witness does not recall [678—595] Secretary Fall ever showing him that letter. As a matter of fact the idea for the Pearl Harbor business came to the witness originally and entirely without suggestion from Secretary Fall. Secretary Fall said to the witness that he considered that "our" authority to exchange covered the acts that "we" were proposing. As to Secretary Fall's suggestion with regard to the legality, he informed witness that he was one of those who wrote that law, and the witness believed that a statement of that sort from the Secretary of the Interior was of more than ordinary weight and it did have a considerable effect upon the witness. The witness had successfully combated to the satisfaction of Secretary Fall his statement that he questioned the legality of it and thinks that he convinced Secretary Fall that the latter was wrong. Ultimately the witness took up the matter with the Judge Advocate General, and thinks that he told

(Testimony of John Keeler Robison.)

Secretary Fall that the Judge Advocate General thought what was proposed was correct.

On April 12 Secretary Fall wrote a letter saying that there was grave doubt of bids and that letter was addressed to the Secretary of the Navy. No action was taken on it because witness waited for the three days until the bids would be opened.

“Q. You understood my question, Admiral, did you, as to whether you went to Mr. Doheny to ask him if he would bid because Secretary Fall doubted on account of the probably legality of it whether anyone would bid? What have you to say to that?

A. Well, there isn't any question that when I went to Mr. Doheny it was with the idea that this was a very complex question where there was only one possible justification of our action in the law, and it took a man who had faith in the Government—

Q. You haven't answered my question, Admiral.

A. I think I had that in mind at that time.

Q. Haven't you testified and said that it was because of Secretary Fall's expressed doubts that you went to Mr. Doheny?

A. I can answer that question as follows: I have made a large number of formal statements on oath or on honor concerning this matter. I have never made [679—596] any attempt to make one statement agree with another and I don't intend to begin along that line. If you ask me a question as to my present recollection you will get an exactly correct answer for the moment. If you ask me what I

(Testimony of John Keeler Robison.)

testified at some other time, I don't know.

Q. (By Mr. ROBERTS.) I will ask you if at page 949 of the Senate Record, when you were before the Senate Committee in the investigation of the oil leases, did you not testify this with regard to the matter:

'Senator NORRIS.—Secretary Fall?

Admiral ROBISON.—Yes; as Senator. I rather thought he knew what was meant by it.

Senator NORRIS.—Well, I think that you would be justified in following that.

Admiral ROBISON.—And he told me that after advancing such objections, as you have just made, and after hearing me as to the needs of the situation, it was all right; he advised me that it was all right, and that he could arrange to bring it about, he thought. Later he did advise me that there was grave doubt as to whether, in view of some question as to the legality of undertaking such an extensive project as was involved in this million and a half barrels, he could get any bids from anybody, to put it across. Well, I felt very badly about it—and I don't know whether this is quite pertinent to your question, but I would like to state it because I want to pay a tribute to a man. I told this young officer, who had been with me aboard ship, and who was a friend of mine, about it, and I said, "I don't know how to handle the thing. Talk to your dad, won't you?" I got a letter from him saying that he had talked to his father, and his father would see me within a day or so and talk it over. That he agreed

(Testimony of John Keeler Robison.)

that the defensive well proposition was necessary. And then I got hold of the old man—of Mr. Doheny, the President of the Pan American Petroleum & Transport Company, and I recited the circumstances, and I appealed to him as a Californian to help me accomplish what I showed him was needed, and he promised me that we would have at least one bid. And that is the only way this thing was accomplished, I believe.'

Q. Did you so testify?

A. Yes, I did.

Q. There is just a little more of it, another question and answer:

'Senator NORRIS.—I understood you to say that Secretary Fall—

Admiral ROBISON.—(Interposing.) I said that Secretary Fall said he dreaded lest we have no bids.

Senator NORRIS.—And he said that was on account of lack of legal authority?

Admiral ROBISON.—He said that was because there was some question in the mind of those other people. He assured me that he had gone into it and was sure that we did have the legal authority to go ahead.'

Q. Did you so testify?

A. Yes."

The witness then stated that he had testified on page 157 of the Mammoth deposition that Secretary Fall told witness that he feared on account of the question as to the legality of this bartering of royalty oil for storage, that people would not bid for this

(Testimony of John Keeler Robison.)

contract and lease in California. He told the witness that, as witness remembers, early in November, 1921; and as a result of that witness went to Mr. Doheny, Junior, told him that the Secretary had doubts about the bidding and asked him if he would procure to have his father bid in any event, or endeavor to do so. The witness asked Mr. Doheny, Jr., to [680—597] get his father's interest aroused in the proposition, which was one that in witness' opinion was vital to the defense of California, and he told the witness that he would. The witness has no alterations to suggest in this testimony.

The witness thought that he remembered a conference where the terms of a letter were changed, or the draft of a letter, and that, as the witness remembers at the moment, the Bureau of Yards and Docks had prepared, or Captain Bacon, who was in the Bureau of Yards and Docks, had prepared, a letter including the general plans for a million and a half barrels of storage and these were to go to the Secretary of the Interior; and the letter of transmittal, after the formal reference and description of them, expressed some doubt as to whether or not the proceeding being undertaken to accomplish the erection and filling of these tanks with the crude oil was a correct one. To the best of witness' recollection there was a suggestion in it as to the advisability of additional legislation, but the matter was determined on the 5th of December when the Secretary of the Navy had approved the opinion of

(Testimony of John Keeler Robison.)

the Judge Advocate-General, so far as the Navy Department went, and it was by the Secretary of the Navy determined to be improper to express doubt of a decision that they had already arrived at.

The language may have been that in view of the doubtfulness of the method of procedure, bids would not be likely to be had unless some additional legislation authorizing this thing specifically were applied for and gotten. It was something along that general line, but referring particularly to the doubt as to the authority of the project.

The witness was opposed to exchanging crude oil for current fuel oil under the supposed authority of the Act of June 4, 1920. This opposition was based on the idea that to use the crude oil to get fuel oil was in effect using the crude oil like money—like spending one's cash. The witness differentiated in his own mind how spending the crude oil for construction work out at Pearl Harbor was not using the crude oil like money—it was the use of the crude oil for exactly the purpose set forth by the Secretary of the Navy when he asked the Congress to pass the law that was passed. If the crude oil were used up, it [681—598] was gone. One would be spending cash for not a permanent asset, but for a current operation, and the other way the cash would be spent for the particular permanent asset authorized by law and intended by the original national policy.

The witness thought that they ought to use this oil because the Navy was losing 1000 barrels, or

(Testimony of John Keeler Robison.)

thereabouts, a day—coming from royalties in No. 2 Reserve and going into the United States Treasury. The witness knew that it was thereby lost to the Navy. They did not have to try to get it back by an appropriation; they did not have it when it was gone. If they had it, it was theirs; if they put it back in Congress and had to appeal to them once more, they would have lost it in between times. They were losing 1000 barrels of oil a day, at \$1.10 per barrel, \$1100.00. At the time the witness conceived this plan he was conscious of the fact that it had no fuel storage reserve, or fuel reserve storage. They had an inadequate current use capacity, and the plans of the Navy, since some time during the Great War, had been to establish fuel reserve storage. [682—599]

So far as the witness knew when they arrived at this plan Congress had not been asked to appropriate for any of that fuel reserve plan, except in the request that led up to the act of June 4, 1920,—that is, the witness means, the request for the passage of the act of June 4, 1920,—this proviso to the act.

The project at Pearl Harbor was for a complete unit of 1,500,000 barrels of fuel oil with pumping stations and fire protection and its own wharf, its own channel.

As to whether applications had been made to Congress for appropriations for fuel oil projects, according to the witness' recollection the entire, whole storage was accomplished without specific

(Testimony of John Keeler Robison.)

authorization by Congress, under Admiral Bradford. The witness had no cognizance of any appropriation for fuel depots or depots for coal and other fuel—he did not think there was any other fuel station. He did not think that certain activities in the direction or storage or tankage projects conducted during the World War were specifically approved by Congress, but that would have been a war proposition; and aside from activities during the war, witness knows of none.

When Dr. Bain came back from California in January, the witness thinks "1922," he heard from him of a lawyer who had expressed doubts as to the legality of this project—only one—a man named Sutro. The witness does not think that he knows the name of Mr. Weil in that connection. At that time when Dr. Bain got back, he expressed the belief to witness that all of those concerns, with the possible exception of the Standard Oil Company on account of some objections that he thought were but temporary, of their company—witness thinks he gave the name of Sutro—would furnish bids in accordance with these specifications. At that time in January, witness believed that the attorneys of the Associated Oil Company and the General Petroleum Company had approved the plans. That was witness' understanding at that time—that the General Petroleum Company and the Associated Oil Company, both [683—600] were supporters of the plan that witness and Dr. Bain were figuring on. He said that a

(Testimony of John Keeler Robison.)

bid could be gotten from the Union, but it was not wanted because they were British owned in a large measure. He did not tell witness that the Union had given him the impression that they did not want to bid—witness got quite a different impression. Witness' understanding was that the Standard Oil Company had made objections that Dr. Bain thought were but temporary, but that the General Petroleum Company and Associated would bid, and the Union would bid if they were given a chance, but it was not thought proper to have other than a completely American company engaged in this project.

About that meeting with Mr. Doheny when he came to witness' office in December, during the conversation he said that his company did not want to go into this proposition. It is quite out of the question for witness to tell the order of events in a conversation like that. He told witness that his company—that he had heard of this from the Interior Department and that he had considered it, but that there was great opposition to the matter in his company and he determined not to go into it. Witness at that time had seen the letter of November 28 which said in effect, "Our company will build storage for so many barrels of fuel oil at Pearl Harbor for so many barrels of crude oil, royalty oil, and in consideration of leases to be granted to us," or words to that effect. The witness doesn't know what he got from Mr. Doheny's letter with regard to "leases

(Testimony of John Keeler Robison.)

to be granted to us," but knows that he didn't get any—not any on that million and a half barrels. Witness did not pay any attention to the statement that there must be other leases granted or other leases to be granted because that letter of his of the 28th, or whatever it was, or that letter that he wrote in November, really was important in that it furnished some figures as to the cost of tankage, and that was practically the only available part of that letter to witness. He used that figure later. [684—601]

Witness' attention was called to Fall's letter of November 29, 1921 (Exhibit 34) to the witness.

The witness was deeply interested in this thing at this time and would therefore scrutinize with care anything that Secretary Fall sent him on that subject.

"Q. What did you understand Secretary Fall to mean by this language: 'Should you think best to accept this proposition, then of course it would be necessary in my judgment to turn over to Colonel Doheny, if we can do so, leases upon further wells in the naval reserve in which he is now drilling?' A. Yes. Well, that is what it looked like."

His proposal at that time involved additional leases to his company—witness don't remember how many. In the conference in December with Mr. Doheny, nothing was said about further leases. There were no further leases in the plan that was proposed. After having received this letter, to-

(Testimony of John Keeler Robison.)

gether with Mr. Doheny's letter referring to the same leases, when Mr. Doheny saw witness about two weeks later further leases were not mentioned at all—not a bit. When witness said that "Then it looked like it," witness meant that it looked as though Secretary Fall thought that in order to accomplish the proposition submitted by Mr. Doheny on the 28th or 29th of November the granting of further leases to the Pan American Company would be a necessity. Witness had not had any talk on that subject with Secretary Fall—the only talk that he had had with Secretary Fall that led up to those leases was concerning the apparently excessive cost of naval fuel storage facilities. He objected to them. The witness doesn't remember Secretary Fall's leaving on the 1st of December, but does remember that he left at the end of the month—that is witness' recollection. Witness thought Secretary Fall went home for the holidays or something of that kind. Witness saw Secretary Fall during December and told the head of the Interior Department—if Mr. Fall was not there, he told Judge Finney—what Mr. Doheny had said to witness about the 14th of December.

To the witness the Interior Department was a person—the witness don't differentiate and never has between them. The head of the Interior Department if it is Judge Finney, is just [685—602] as much to the witness as if it is Secretary Fall or Secretary Work. About the 19th or 20th of December the witness got from this red-eyed,

(Testimony of John Keeler Robison.)

white-faced man this proposal of doing this work absolutely at cost. Witness at once advised Secretary Fall in person what he had got. Witness repeats that he meant the head of the Interior Department—that counsel said Secretary Fall. Witness had no independent memory of whom he talked to about that proposal—man who was important to witness was Secretary Denby. The rest of the people were tools.

Witness told Secretary Denby as soon as he got that proposal that he was going to get a bid at cost—just exactly what witness got from Mr. Doheny and witness knew that he was going to get a bid at cost and without profit to anybody, and that is what witness told Secretary Denby.

Witness also told either Secretary Finney or Secretary Fall, one or the other of them, that fact in December—or it might have been Dr. Bain. Witness told him anyway—he was a tool—witness means the master of that Interior Department was a complete tool of witness'. They were all under witness' hand in naval matters. Witness thought that the tool whom he told about getting this bid at cost was Secretary Fall, and his best recollection is that it was Secretary Fall. It is clear that witness told Bain that—witness is sure that he said "without profit"—he thinks he told Dr. Bain that. The part that impressed witness strongly was that Mr. Doheny was going to give a bid—his bid without profit was a supplementary statement by

(Testimony of John Keeler Robison.)

himself that pleased witness very much, but that was not so important as that the bid should be put in that would accomplish what witness felt would be a necessity. Witness does not want to do business generally with a man that doesn't make some money. The witness wants it to be to that man's interest that the contract be accomplished.

Witness did not have any talk with Secretary Fall about the letter of April 12, 1922, Exhibit 102, before Secretary [686—603] Fall sent it over to Secretary Denby—the one where he said “Better take it up with Congress again”—that was a surprise to witness. It occurred to witness that if taken up with Congress by the language used in the Act, that would constitute an approval of this changed contract, but it didn't occur to witness that it was needed. Witness did not say yesterday that it didn't occur to him that it was needed because they had until the 15th only to wait to determine whether they could accomplish the work; it having been determined by people in whom witness had confidence that it was a legal proposition. Witness thought it was worth while to wait three days and see whether they could get it done. At that time witness was the only man that knew that they were going to get one bid, and the only reason he knew it was because he had faith. Witness says that because he heard the promise made and had repeated that promise to Secretary Denby and to Secretary Fall, and

(Testimony of John Keeler Robison.)

when this letter came in witness said to Secretary Denby, "Let us wait three days, because remember I have got a promise from Mr. Doheny that we will get one bid at least." The witness does not remember any discussion between him and Secretary Denby whether this provision of the act of Congress would not be wise in order to remove all doubt of legality—they had no doubt—except the statement that they would wait three days and have time enough to act then.

Witness saw when it came in—the letter dated April 12, U. S. Exhibit No. 103—it was from Secretary Fall and discussed it with Secretary Denby.

After reading the letter the witness stated that he didn't know that was a request for information from the Chicago, Bridge & Iron Works. Witness told the Secretary that it didn't seem possible to him to handle the matter other than through an oil company without the exchange of royalty into cash, and that it did seem to the witness perfectly possible to handle it through an oil company to the Navy's advantage. He remembers [687—604] nothing else. At the time that letter came in, witness had the promise of a bid without profit and had faith that there would be such a bid.

"Q. Well, did you turn to Secretary Denby and say, 'I know we are going to get one bid without any profit at all in it,' and that 'therefore Secretary Fall's idea that there will be a contractor's profit amounts to nothing?'

(Testimony of John Keeler Robison.)

A. I did.

Q. You then told Secretary Denby that there was going to be a bid without profit?

A. I did.

Q. Had you had that matter confirmed to you again after Mr. Doheny's original conversation with you?

A. In but that one conference."

Counsel then read to the witness from the other letter of April 12,—

" 'I am therefore holding up the proposed contracts indirectly by taking abundant time for a consideration of bids, and so forth, with the purpose that meantime this amendment may be adopted and that we may obtain the results suggested by the large savings which I am confident will accrue.' "

Witness does not know whether or not he said to Secretary Denby that if one of the bids was to be at cost there couldn't be any saving below cost. That language didn't make any impression on the witness' mind because it was definitely determined that they were going to get a bid at cost on the 15th of April, and witness made his faith known to his chief and he agreed to wait.

Witness knew nothing about other bids at that time. He did not know until after the bids had been opened that the Associated Oil Company would not bid except with the approval of Congress. He had been informed that Mr. Sutro of the Standard Oil Company had been down to Wash-

(Testimony of John Keeler Robison.)

ington and talked with Bain and Finney and stated that the Standard Oil Company would not bid, but witness thought they would bid just the same but didn't much want a bid from the Standard Oil Company because those were the people he wanted to be protected against. Witness didn't care much for the Associated Oil Company—the Pacific. He thought there was one way to get safety and that was to get [688—605] protection against the people who were their neighbors. The witness thought there was no other company that could give the company quite as good service as was given by the Pan American unless it was the General Petroleum Company, and he hoped that they would receive a favorable bid from the General Petroleum Company. He thought that up to that time nobody had told him that their lawyer was unalterably opposed to the contract arrangement.

Witness saw Dr. Bain of the Bureau of Mines and Mr. Ambrose very frequently. They were not constantly discussing their hopes and fears as to whether there would be bids. Witness was trying to get knowledge from petroleum engineers.

Between February 15 and April 15, there was a lot of stuff that witness went over. The general petroleum situation was taken up, the rate of production, causes of changes of price, location of new fields, and all that sort of thing; foreign production, imports and exports, variation in quality of fuel that we could use, the possibility of

(Testimony of John Keeler Robison.)

using—oh, there was a lot of things. The general petroleum question.

Now, whether witness says that that was taken up at this particular time, that is not correct; but it was taken up by him with them at one time or another. The witness presumes that he testified concerning the letter of April 12 about the Chicago Bridge & Iron Company from Secretary Fall, in the Mammoth case. He presumed—he didn't know—whether he had given a different statement and as to what he said to Secretary Denby about it—he never will use the same words twice, probably—he thought counsel was sticking on words. In the Mammoth case witness testified that he saw the letter, discussed it with Secretary Denby and told him that he did not think they would save any money; that the bids that had been received provided for the construction of the facilities at Pearl Harbor without profit, and they could not do any better. Obviously witness made a mistake because they had not received any bids on the 12th of April. [689—606]

Witness thinks he testified in the Mammoth case as to the letter of April 12, 1922, in which Secretary Fall called attention to some proposed legislation. At that time witness testified, "Secretary Fall himself says here to hold up the making of the contract until Secretary Denby would act on the recommendation in that letter,"—that this was April 12—that they had the bids at that time—that he did not tell Secretary Denby to disregard it because he

(Testimony of John Keeler Robison.)

knew he was going to get a bid—he had it.

Witness states that he was obviously inaccurate in that statement. As to the accuracy of his recollection about all these various matters, he would prefer to let the record speak for itself. It is as accurate as he can make it and he has been prayerfully intent to make it correct.

Witness is right now because the bids were not open until the 15th. Witness knew that he had the promise of one bid—he had faith as he said.

Secretary Fall told witness nothing in October, 1921, as to his conversation with Mr. Doheny about a bid on Pearl Harbor project. Toward the end of November, the question of the Pearl Harbor project had been placed under consideration by Mr. Doheny as is evidenced by his letter. On the subject of Secretary Fall's conference with Mr. Doheny in that letter Secretary Fall originally said that too much was being paid altogether for storage facilities. That he thought they could get tanks for twenty-five cents a barrel. Witness discussed that point at some length with reference to the peculiar conditions in Navy tank farms, and so forth, and the location of tank farm that they were proposing, and the Secretary said he would find out what it would cost to get them out there. Witness don't know whether his inquiry as to cost was directed to but one person, but did understand that he was going to find out from some one or other—witness don't know whom—what it would cost to put up tanks in Pearl Harbor. That is the only

(Testimony of John Keeler Robison.)

conversation witness knows of that could have [690—607] referred to Mr. Doheny. Witness thinks now that Mr. Doheny's name was not mentioned by the witness and Secretary Fall prior to November 28 on this or any other subject, and that prior to November 28 witness had no knowledge either from Secretary Fall or from any other source that Mr. Doheny had been approached on this Pearl Harbor project.

Immediately the letter of November 28 was sent to witness with Mr. Fall's letter of November 29, and after the Council meeting of November 29 witness took up with the Judge Advocate General the legality of the Storage project. The reason why witness took the matter up with the Council and the Judge Advocate General was not because of the letter of November 28 making a proffer or showing there was someone who would make a proffer on the subject, but witness wanted to get Secretary Denby's final formal and definite approval of the project, and his formal, final and definite disapproval of the project to use the royalty oil for current needs.

Witness does not think that he knew the J. G. White Engineering Corporation was in the matter until after the bids were invited on February 15.

Witness does not remember stating in direct testimony when he first knew the J. G. White Engineering Company was interested, and does not remember speaking of that Company or Mr. Dunn, and said

(Testimony of John Keeler Robison.)

"I am afraid I am suffering from senility. I don't recall."

Referring to some letter of February 24 or thereabouts saying something about a call on witness, Mr. Dunn and Mr. Cotter came to witness' office together and witness there met Mr. Dunn for the first time and afterwards took them over to Admiral Gregory about some technical matters that were not in witness' department. Witness does not think he had any discussion with Gano Dunn save on the general question of the advisability of the use of some engineering construction—a general contractor in an engineering capacity. These gentlemen called on witness to say that the invitations that were then outstanding were very unsatisfactory because they were attempting to get lump sum bids and this was a job on which they could not work except on a cost-plus basis as things then stood. [691—608]

The witness did not say to those gentlemen that their principal had agreed with witness to bid without profit and at cost—that wouldn't make any difference. If there was a bid that was to be at cost, it would not be cost-plus profit or cost-plus a fixed fee. Witness was expected to get a bid that would be a cost bid and in that cost bid the usual engineering fee should be paid. Witness would not have objected to engineering fee to Mr. Dunn's concern if it were a proper fee and a proper concern.

When Admiral Gregory talked with witness on the question, witness told him about the cost bid he had expected to be stated in terms of figures.

(Testimony of John Keeler Robison.)

When you go into competitive bids you have got to get up figures, witness thinks. He had not expected a bid to be presented in terms of, "We will do this work at exact cost,"—he had expected a bid that would say, "We will do this work for so much" which figure would have been the originally estimated cost of the project on a fixed price proposition.

Witness first learned what the Pan American bids were on the evening of April 15 or the morning of April 16. He found that one bid was not in those terms at cost. It was obvious from the terms of proposal B that proposal A was not at cost. Witness was not surprised to find that proposal A was not a cost bid at all because it looked like the accomplishment of the promise itself. The promise had been to make a bid at cost and they made one not at cost and that looked like the accomplishment of the promise.

Bid A looked to him to be as nearly as possible a bid in exact compliance with the proposal originally made to him. His estimates had shown—some figure or other which he cannot remember as the estimated cost of the project. Bid A did slightly—no, did considerably exceed that estimate. But in view of the character of the information concerning the work to be done, and in view of the fact that a hazard has a definite value, an insurance, let us say, he thought that Bid A was a very reasonable bid and that it [692—609] involved no prospective—or no assured prospective profit.

(Testimony of John Keeler Robison.)

There was a possibility of profit in it, true, and there was a possibility of loss in it, he thought.

Proposal B likewise had a limit in it, a lower limit than proposal A, and a further provision that if actual costs were less than this lower limit, the Government would receive the benefits of any savings accomplished. There was a proposal of a little bit better than a cost bid. That proposal seemed to the witness to say: "I will give you this proposition for cost and in any event for not more than so much." There was one other thing in it—the consideration was to be a preferential right to any leases in Reserve No. 1. Witness took that up with Secretary Denby who said, "Well, if they don't meet our requirements we can always throw it open to public bidding by advertising, and that is our protection." Whether he said that to witness or witness said it to him, they agreed that that was a fact. They knew that before they threw it open to public bidding, they had to submit it to Mr. Doheny's concern, and that he was to have equal rights with any bidder if it was thrown open. Witness did not know then that *that* in effect they would destroy competition. The preferential right had a great deal more value than witness suspected at the time.

The bid was opened on the 15th and the contract was awarded on the 18th—was entered into on the 25th, so that the 15th was Saturday, and they didn't consider it but a few hours. It looked good to them

(Testimony of John Keeler Robison.)

then because it gave them an assured advantage of a couple of hundred thousand dollars and a prospective possible advantage of whatever savings they could make. The gross as it turned out was about \$500,000 and the thing looked like \$500,000 at the time. Five hundred thousand dollars was not a picayunish amount to pay for a lease on the remainder of that reserve. [693—610]

Witness would not agree to a lease of that territory for \$500,000. Witness realized that it was going to reduce the number of competitors by one in the first instance, or he figures that now, but that didn't seem to him to destroy competition at that time. It did have that effect afterwards. Witness was not present when Dr. Bain and Mr. Cotter were discussing the probable value of that preferential right—when Bain joshed Cotter when Cotter said it was not worth anything.

The first information witness got about this proposal B was a telephone communication from Bain who congratulated witness on the success of the competition. He said he had had several bids and they were all lower than expected—he said that at that time. [694—611]

He said that he did not know the Associated Oil Company's bid was conditional on Congressional action. He had not looked up the modifications or conditions attached to any of the bids at the time of this telephone message. At that time Bain knew that witness was expecting a bid at cost from the Pan American, for witness had told him so, and he

(Testimony of John Keeler Robison.)

called the witness up and congratulated him on having gotten bids. Later, on Monday morning, the 17th, witness thinks he went over and looked things over and got from Mr. Ambrose a digest of all the bids with the circumstances attached to each, conditions, and thereafter witness took that digest of the bids over to Mr. Denby, or a copy of it, and used it in discussing the matter with Mr. Denby. There was no question which was the lower bid. The question was which of the two Pan American bids was the better for the Government. Pan American had made an unqualified bid in accordance with the specifications and was entitled to the contract, and the question, as witness looked upon it, was which of the two bids offered by the Pan American was to the advantage of the Government. Witness brought back Secretary Denby's answer. In the first place witness had talked with Bain and Ambrose and went and got Denby's answer, and then brought Secretary Denby's answer back to them, where he said to go ahead on B. It was after witness had gotten Secretary Denby's approval that Secretary Finney sent some telegram out to Secretary Fall. Witness was present when that telegram was dictated. Witness had not been informed by Director Bain or Secretary Finney that Secretary Fall had left instructions that no lease was to be closed without his being advised of the circumstances. Witness did not know that until now—counsel's statement gives him that information. At all events, a telegram was sent to Secretary Fall and a reply re-

(Testimony of John Keeler Robison.)

ceived from him. Then on the 18th, Secretary Finney wrote the letter of award which was not delivered in witness' presence. He does not know that it was mailed to Cotter. He was merely informed that that letter was sent. He saw a copy of that formal letter of award, but never had a copy of it in his possession.

The question of the two additional leases, the Northeast quarter of 3, and the strip lease back of the Belridge in 34, was included in the letter of April 25th, the covering letter, a separate letter accomplished at the same time as the contract. Witness would imagine that it was about the 20th when he [695—612] saw Mr. Cotter, after the award, and Mr. Cotter said he would prefer that the Government had taken proposal A. He said he thought witness had done the best thing for the Government, but that he (Mr. Cotter) wished the Government had taken A rather than B, and he said something in general terms that he wanted something to show his company that he had gotten some leases. Bain was there and said that this lease in the northeast quarter of 3 and this lease back of the Belridge would be all right to give because they have got to be given anyway. Witness never heard Doctor Bain say that was not the reason, but that the reason was these two leases were given was that there would be more royalty oil under the contract. The last was not a portion of the reason on April 25th, witness thinks. He never heard that expressed and certainly he and Bain did not give that as amongst

(Testimony of John Keeler Robison.)

themselves as a reason why those additional leases ought to be given. He may have been of cognate advantage to the Government. Witness did not understand that counsel was asking whether that was discussed. Witness has stated that Bain said, "Yes, give him those two leases because we have got to have that protection in that corner anyway," and that was the thing that was expressed at the time the leases were agreed to.

Something like this may have been further said at that time: "And besides those leases will give us additional royalty oil of which the Navy will get the benefit." That is the way they talked to witness all the time. Witness felt that Bain or Ambrose all the time were trying to help witness accomplish the Navy's interests.

Witness, after examining papers, stated that he saw only two wells that they had drilled in the northeast quarter of 3 on the lease that was applied for and granted June 5th, of which only one was producing, as witness remembers, 381 barrels, the one right opposite the corner of 35, just opposite the Pacific Oil block on 35.

At the time that question was discussed, witness knew of the temporary reserve nondrilling agreement with the Pacific Oil Company that had been set up. It covers sections 32 and 33 and all lands within one-half mile of those sections, so that these areas in Section 34 and Section 3 were immediately adjacent. Witness had not been advised by Doctor Bain that after that reserve was set up before April

(Testimony of John Keeler Robison.)

25, 1922, there was no necessity of doing any more drilling in Sections 34 and 3. [696—613] On the contrary, the extra drilling in 34, adjacent to the Belridge lease, was felt and is felt by witness to be very desirable drilling for the protection of the Government's interests against the Pacific Oil Company's holdings in 35. Witness really does not know whether the protective lease in Section 3 has been drilled. He has been out there and looked at it, but could not answer the question at this time. He does not think there are enough wells in Section 3.

The Act of June 4, 1920, carries with it an appropriation of one-half million dollars, which was spent for fuel oil storage facilities—several tanks at Coca Sola, and also for some tankage on the Atlantic seaboard. The entire \$500,000 was appropriated and spent for tanks and pipes and facilities, etc. A question came up before witness which witness referred to the Judge Advocate-General, as to whether any part of that half million dollars could be spent for dredging up to the tank at Coca Sola, and witness was of the opinion that it could not be and took the Judge Advocate-General's opinion and he advised that it could not be. Witness has been informed that in the opinion of many eminent lawyers there was no difference between the dredging at Coca Sola and the dredging at Pearl Harbor, but witness found a difference, as a fact, but when it comes to matters of fact in connection with the law, witness is quite incompetent. He took the view that it was not available because he figured that Coca Sola

(Testimony of John Keeler Robison.)

was a case where it was not necessary. In the case of Pearl Harbor it was absolutely necessary, but an entirely incidental function. The Government had the tanks at Coca Sola already and could get to them, but could not have gotten in the same way to the tanks at Pearl Harbor. There was a great deal of difference. In the one case it was quite inaccessible, and in the other it was only difficult of access.

Witness thinks there were more than 38 tanks built there out of that appropriation which witness thinks are full of current use oil, but were built as for reserve oil. When they were built, there was no reserve oil to go in them because all of the reserve oil was being used to fill tanks at Pearl Harbor and elsewhere. Some of that half million dollars was also used to build tankage at Yorktown, or somewhere on the Pacific Coast. Witness is not particularly interested where it is—it is tanks. Witness thinks that at present the oil that is in it is supplied from the appropriation for current [697—614] use. When they had exhausted that \$500,000 they stopped building those tanks, as they did not have anything else to go on with.

The witness' intention was to accomplish the approved plan for the national defense, which, translated into other terms, means that the witness meant to go on from one project to another, so that when the crude royalty oil had paid for one, they would go on to the next until the entire project was completed. The estimate of \$103,000,000 has been made

(Testimony of John Keeler Robison.)

of the gross value of the entire system of required fuel oil. These are plans approved by the Board of Navy and are not submitted in detail to Congress, and the provisions that witness has been speaking of have not been submitted to Congress in detail as far as witness knows.

In general, the entire plan was submitted to Congress and was approved by them in 1920 by the Act of June 4, 1920. Witness refers to the language in the proviso and to the language in the letter of the Secretary of the Navy transmitting that proviso to the proper Congressional Committees.

After April 25th, 1922, witness suggested that a revision of the plans be done by those competent to do so. Witness went over to Operations personally and asked that they go over the question of the plans and also told Operations that he would have crude oil available to go on to other projects to be built under those plans ultimately. Witness thinks he got information as to whether there was under consideration the fact of increasing the fuel oil storage at Pearl Harbor, or he knew they were going over it; but he knew in November—he does not remember the exact date—what the answer was. Some of the papers then were introduced. By November 20th witness knew that the Navy had approved an increase of storage tankage at Pearl Harbor.

It was on or about the 27th of October that witness first had knowledge that Mr. Doheny, or his company, had a plan about the California Reserves.

(Testimony of John Keeler Robison.)

Witness did not know it on the 28th of July or thereabouts, as far as he knows.

Witness thinks he knew of the letter of July 28th from Mr. Cotter, Exhibit 140, to Mr. Fall. The particular portion of it that witness recalls is the next to last paragraph where it says, "We hope you will see your way clear to authorize us to suspend operations both of drilling and production to such extent as we may find it necessary." This thing says that he has not got a [698—615] plan but is going to get one. The plan that he was going to get did not make any impression on witness' mind—he had not seen it yet.

At that time Secretary Fall took up with witness the question of shutting down as much as possible all drilling on the Reserves. Witness does not know that that condition of shut down has remained practically from that time to this, but thinks that it remained in effect until Government counsel took charge and thinks that Government counsel opened them up again. He does not think Government counsel was personally responsible for it, but knows that the number of flowing wells was greatly increased about the time the matter was formally placed in court, both in the Reserve and immediately adjacent to it.

The so-called policy letter of the 25th of October, 1921, in one of the first paragraphs, required that as much of the oil as possible within the Reserve be retained in the ground, and witness has always tried to

(Testimony of John Keeler Robison.)

accomplish the intent of that policy, and has not received anything but support from any source.

Answering a question as to whether the policy declared in the policy letter caused witness not to lease up the western part of the Reserve—the part in neutral color—witness stated that, “in the letter of the 25th of October we announced to the Secretary of the Interior our desire that no unnecessary drilling be done. The spirit of that involves the closing in of our offset wells when people outside of the reserve will close down theirs, and the Bureau of Mines did succeed, or at least informed me that by agreement certain wells in Section 35 and 36, as I remember it, had been closed down and that we were closing down corresponding wells in Sections 1 and 2. Now, that was not an isolated instance.”

The oil was to be kept in the ground if they could on the green part permanently. Witness is talking about this—when he can keep the oil in the ground, he will keep it, and when he has got to take it out in order to keep somebody else from getting it, he has taken it out. That is not the only reason why the oil has to be taken out, but the controlling reason—witness has always said so. He never said that the only controlling reason for the making of the lease of December 11, 1922, was to get the storage built. He has always said to Government counsel that to him the most important function [699—616] of the lease of December 11th was the accomplishment of the national security, of the stor-

(Testimony of John Keeler Robison.)

age; that to him that is the most important result in that lease, but that lease could not have been accomplished had witness been unable to say to the Secretary of the Navy that it involved the drilling of no lands that he did not consider it necessary to drill in order to protect Government property from drainage to outside concerns.

Witness had not stated in so many words that drainage was not the consideration in his mind that moved him to make the lease at all, or to be for it, but did say to Government counsel that the most important consideration to witness was the National security.

Witness said to Government counsel that with regard to Mr. Doheny's proposition of November 6, 1922, all he said about the low price of royalty oils had no effect on witness' mind at all—that it was not witness' practice to gamble in prices over a period of fifteen years, and that Mr. Doheny did not refer at all in that memorandum to drainage and did not place it on the subject of drainage whatever.

Answering a further question as to whether witness had not said that he did not give any consideration to drainage and said that he wanted the job done and was going to make the lease, witness said that he did want that job in Pearl Harbor done and did want it very deeply, and that it was to him the most important result, a more important result in his opinion even than the protection of Government's property.

(Testimony of John Keeler Robison.)

Witness did not say to Government counsel that there was no necessity to make any lease at that time, December 11, 1922, in that reserve, on the subject of drainage. He does not think he said that any further leasing could have waited indefinitely if he had not wanted that storage built, but he did say that there was little additional immediate need for leasing, which need for additional leasing was around 36. That was needed at once. Witness does not think that he ever said to anybody that if they had to lease up the whole reserve to get the storage project done, he was prepared to lease it all, but does not think he said that he was prepared to lease such portion of the reserve as was liable to drainage to outside concerns. [700—617]

At the time witness agreed to the giving of the lease of December 11th, he believed and was conscious of the fact that the Pan American Company could take every stitch of oil out of the reserve covered by the lease, except as restricted by the terms thereof, and witness gave the lease in part because it was necessary to give that much to get the covenants that the Government got, and in part because witness believed that that area had to be developed and must be developed in the near future—certainly within the life of the lease—in order to protect Government's property against other people getting the oil out of it.

Witness understands the life of the lease to extend until it is dry—that might be thirty years, or three hundred he hopes, and therefore he was willing to

(Testimony of John Keeler Robison.)

pledge that territory for that length of time and thought that drainage might occur during that time, and in much less time, and knew that drainage was occurring when the lease was entered into.

Q. "Now what was that you said to me, that you couldn't have gotten Secretary Denby's consent to him that it was necessary to make it on account to him that it was necessary to make it on account of drainage?"

A. "That there was no property leased that was not liable to drainage by outside concerns."

Witness did not tell him it was liable to immediate drainage and did not think he used the term about this 300 year period before this moment. Witness did not tell Secretary Denby any period that it was likely to be drained out in, and the Secretary did not ask witness. That is, in witness' opinion, an area where the Government interests will be best protected by drilling the property now.

Witness thinks he asked Doctor Bain about that subject. He did not tell witness that unless the Government wanted the royalty oil for Pearl Harbor there was no technical necessity for making any lease at the present time, except the offsetting lease around 36. There is only one portion of that area, namely, Section 24, just two miles north of Section 36—it is the only area in that white portion, or the portion in which the Pan American Company have the right to drill, where Doctor Bain did not advise witness that it was desirable that the Government do lease it now. Witness does not think that Doctor

(Testimony of John Keeler Robison.)

Bain said to him that except for the Navy's desire immediately for the royalty oil, there was no technical reason to lease up that territory at that time. [701—618]

Witness will not say he did not say so, but will say that witness does not think he said anything of that kind. He certainly said nothing of that kind that impressed witness.

Q. "As a matter of fact Dr. Bain didn't suggest the leasing of the whole reserve, or any major portion, of it, did he?"

A. "I did."

Q. "You did?"

A. "I did."

By that time witness had not become a technical oil man, in witness' judgment. [702—619] The witness took up this naval reserve matter first with Secretary Fall on October 9 and was in constant touch with him from that time forward. Witness knows Secretary Fall's signature and on being shown his travel voucher showing that Secretary Fall returned to Washington October 17, P. M., and left Washington A. M., July 31, witness stated that he thought that to be Secretary Fall's signature.

It was stipulated between counsel that Secretary Fall returned to Washington in the afternoon of October 17.

Witness stated that it was quite clear that he could not have conferred with Secretary Fall and continued in conference with him from the 9th for-

(Testimony of John Keeler Robison.)

ward if he didn't get back to Washington until the afternoon of the 17th; but the witness was in Washington, therefore the date is in error in saying that witness took the matter up with Secretary Fall on October 9th. He could not have taken it up with him much before October 18; and the letter of October 25th must therefore have followed conferences that were within a few days of that date.

Counsel then stated that he found from the certified copy of Mr. Ambrose's travel voucher that he was away from Washington and didn't arrive in Washington until October 19th.

The witness stated that if Ambrose was out of Washington, witness did not see him prior to that date, and that whatever conferences there were where Secretary Fall or Mr. Ambrose were concerned, that led up to the letter of October 25, must have been within a week or must have covered about a week.

The witness had no conferences with anyone else in the Interior Department except Fall, Ambrose and Bain leading up to the so-called policy letter.

The witness submitted informally to Secretary Fall a draft of the letter of October 25 before the final draft was made. The words, "Or otherwise" were added at Secretary Fall's request in paragraph five where it is said, "The Interior Department will exercise its best efforts to obtain for the Navy [703—620] as large royalties and as favorable terms as practicable by public competition, or otherwise." When Secretary Fall requested wit-

(Testimony of John Keeler Robison.)

ness to add those words to that paragraph, he told witness that Dr. Bain—or Dr. Bain told witness, one or the other—that the handling of those matters could sometimes, especially in connection with pending claims, be handled best without public competition. Witness told Secretary Denby about it and told him in effect what witness had been told on this subject. Witness' recollection is that the paragraph as originally drawn was drawn by witness, and that he did not show the matter to Secretary Denby in its drafted form until after the words "or otherwise" had been included, and that witness told Secretary Denby that these had been included at the instance of the Interior Department, particularly to provide for the cases of pending claims on oil lands in the reserve. It had been explained to witness that where there were pending claims, those were to be settled under the act of February 25, 1920. Of course witness knew that it wasn't so that such pending claims are always settled by the grant of a lease or some part of the reserve or some part of section 1, for instance the Midway lease in section 1 that counsel spoke of yesterday. Some times those pending claims were not granted but in lieu of granting the claim, a lease was granted and that is always what was done under the act of February 25th, the claimant surrendering his claim to patent and getting a lease on all or some part of what he was claiming by his patent, by negotiations—that is the word witness was looking for awhile back—"negotia-

(Testimony of John Keeler Robison.)

tions." The royalties were not fixed by the Interior Department's regulations from 12 to 25% in the case of this United Midway lease on section 1. That was the argument that was presented to witness and that was the matter that witness was considering when the words "or otherwise" were written in. Witness had no thought that a contract for construction would be let otherwise than upon competition. [704—621]

In 1917 in a talk with Mr. Doheny he did not say that No. 1 would be gone and he did not say that No. 2 was gone. He said that one of them is already practically destroyed as a reserve, and the other is in a fair way to becoming so, or words to that effect.

When witness became charged with these naval reserve matters he investigated in a general way to see what had in fact been the development in and near No. 1. He does not remember when he first knew that the first well in Section 36-23 was drilled in the year 1919—he did know the date of the drilling of the various wells. He became aware of the time when the first well was drilled in Section 36-24 which lies just outside the reserve—in the year 1920, and became aware of the fact that the first well that was drilled in Section 35 next to the Section 36 just referred to, was drilled subsequently in the year 1920.

He recalled in general terms the letter from Secretary Fall to Secretary Denby dated April 12, 1922, which is Exhibit 103 referring to this pro-

(Testimony of John Keeler Robison.)

posed amendment by congressional action. He thinks this letter was called to his attention in the hearing before the Senate Committee on Public Lands and Surveys.

Witness testified that at that hearing Senator Walsh asked whether that matter ever came before witness and witness said that he had no recollection of that letter. Witness also testified that Senator Walsh asked what the witness said now about the policy outlined in it, and the witness said, "Well, it sounds pretty good." Witness states that he further went to Senator Walsh after going to witness' office and investigating the files and informed the Senator that witness had made a mistake and was informed by the Senator that a correction on that matter was of no importance. [705—622]

The only lawyer witness recalls objecting on behalf of an oil company to these proposed contracts was Mr. Sutro. Witness testified in the Mammoth deposition that there were two of them—two lawyers who expressed opinion of the illegality of the proposition before the Mammoth oil lease was signed, and a third one that witness did not recall. This was before the Mammoth lease was signed.

Witness recalls now Mr. Sutro and no others who came to his knowledge before the Mammoth lease was signed on April 7, 1922. Witness does not think he ever heard the name of the other lawyer or lawyers.

Witness does not recall at this time any further

(Testimony of John Keeler Robison.)

conference with Mr. Doheny, Sr., subsequent to December 19th or 20th, 1921, and the contract of April 25, 1922. He heard part of Mr. Doheny's testimony before the Senate Committee but does not remember the date. He thinks that Mr. Doheny made the statement that witness came to New York to discuss the tankage with him at his son's house in the winter, and that he could not fix the date, but that it was in cold weather. Witness does not think that he was in that house at that time, and does not think that he saw Mr. Doheny, Sr. except—in connection with this matter—in New York. Witness does not recall hearing any testimony given by Mr. Doheny to the effect that this weather was cold and that Admiral Robison came to Mr. Doheny's son's house in New York and talked with Mr. Doheny about it there—that Admiral Robison came there from Washington on purpose to talk with Mr. Doheny about it—that it was cold weather and that Admiral Robison came up to the house and Mr. Doheny's son asked him up to the house to meet the Admiral—that Mr. Doheny's son, by the way, had been in the Navy and was on the boat that the Admiral was Captain on, the "Huntington," and that Mr. Doheny's son invited Mr. Doheny to come up and meet Admiral Robison and they talked over this proposition up there—that if Mr. Doheny was to fix it from any [706—623] other circumstances than just a guess, he would say that it was some time along in the latter part of the winter, the latter part of Janu-

(Testimony of John Keeler Robison.)

ary or February. Witness does not recall seeing either of the Dohenys in New York at or about that time. He doesn't say that he didn't do so, but he knows that he didn't go to New York especially for that purpose to see anybody. The best of his recollection is that he did not see Mr. Doheny, Sr., after the conference in December, 1921, until after the contract of April 25, 1922, had been awarded or closed.

Witness did not O. K. on Mr. Doheny's letter the proposition in Mr. Doheny's letter of November 28 sent witness by Secretary Fall with his letter of November 29, 1921. Witness thought that the proposal was incomplete. It did not include but one item that was of importance to witness, and that was the knowledge of the price of commercial tankage. That was the one item in that letter that really interested witness and the information that here was one concern that was willing to undertake the Pearl Harbor construction for the Government.

When Mr. Doheny talked to witness in December, 1921, he said the matter had been under consideration by him, that it had been brought to his attention by the Interior Department, but that the people of his concern objected to it—that they had some interest, witness thought he said, in the vicinity of California, but no such considerable interests as would justify in the opinion of the rest of his company the large expenditures that would be required. Witness understood from what he said

(Testimony of John Keeler Robison.)

that he meant interest by way of ownership or leases of oil lands. He did not state to witness when or where they had changed their minds after the letter of November 28, 1921, was written, but said that he had made up his mind to give it up or to stay out of it. Witness thinks that is the term that he used.

Witness was familiar with the invitation of March 7 which Dr. Bain or the Interior Department sent out to various [707—624] persons—the last invitation. It was not gone over carefully with witness before it went out in the same sense that the later proceedings—the contract—was; only sufficiently for witness to be assured that the major points of the Navy's desires were incorporated. It is the best of witness' recollection that he knew of the clause in the invitation which invited alternative bids. Witness understood that request for alternative bids meant about the same as it does in Naval contracts where the opportunity is frequently offered to prospective bidders to accomplish the Government's purpose as set forth in the specifications by methods differing somewhat from those set forth in the specifications. Witness did not think from a reading of the invitation that it was an invitation for an alternative which involved leasing of any part of the reserve. Some time or other before the date the bids were submitted, Mr. Cotter told witness that his company proposed to submit an alternative bid. He did not state to witness then that that alternative would involve

(Testimony of John Keeler Robison.)

a preferential right to lease. Witness did not know that until after the bids were opened.

Dr. Bain did not say to witness prior to the issuance of the invitation of March 7 that he had been advised that the Pan American Company desired the opportunity to submit an alternative bid.

Witness had discussion between the 1st of March and the 15th of April with Dr. Bain about prospective bidders and about the expectation of bids and that sort of matter, and kept in touch with him closely on that subject particularly because during that period it was necessary to keep in close touch with him in order to be assured of the prompt dispatch of plans as they were accumulating in the Bureau of Yards and Docks.

Witness' best recollection is that when the bids came in and he was apprised of them, there was no discussion to the effect that proposal B was not in accordance with the invitation— [708—625] that nobody raised that question or discussed it. Witness can't tell what he thought then as to how large the extent of the preferential right was that was being asked.

The preferential right when granted did not follow proposal B but only granted a preferential right of what one may roughly call the eastern half of the reserve. That was done in accordance with the recommendation of Mr. Ambrose—the report that he rendered in which he said that if the preferential right were granted at all it ought to be limited to the eastern half of the reserve—which report

(Testimony of John Keeler Robison.)

was in accord with conversation engaged in at the time, the only part of the reserve then in danger of drainage.

Witness saw the report of H. Foster Bain dated February 4, 1922, and may have had a copy of it in his files furnished him by Dr. Bain. The recommendation there is that in view of the unsatisfactory nature of the bids received over here in the middle of Section 36, and in the light of additional information gathered in California, it was recommended that the area in Section 6 and Section 25 be not leased for the present. The first was in Section 2, and then—no, he didn't get prospective bids around 36.

From April 25th forward it was the policy to make any further leases in Naval Reserve No. 1 with witness' knowledge and with his co-operation with the Interior Department. The extent of those leases and the urgency of those leases was limited, however. It was witness' idea and he had expressed it to the Interior Department that they did not want again to be behind hand in the development of any areas—if the other fellow along their borders was going to drill and witness knew of it, he wanted to lease at once with the least possible delay. Witness does not know between April 25th and December 11, 1922, what other fellows were going to drill anywhere there. The information along that line would come from the Bureau of Mines. Witness' present recollection [709—626] is that the information which came to witness was

(Testimony of John Keeler Robison.)

that every one was shut down. Witness recalls that at the instance of the Pan American Company, Secretary Fall took up with the Standard, the Pacific and the Carmen people, as sublessees through the Pacific, the question of closing down any bordering drilling and closing down any production as far as possible. Witness was not merely agreeable but urged that policy.

Witness' present recollection is that in the summer of 1922 when witness was in California on other Government business, he met both the Dohenys and several of their associates in the oil business, and that on one date they made a trip where they covered the Elk Hills land. This was in June or May, 1923, that witness went with them to the reserve. Witness does not think that he saw Mr. Doheny in the summer of 1922, and he has no records of any conference with Mr. Cotter, but thinks he may have seen Mr. Cotter because the start of the Pearl Harbor project involved considerable communication between the J. G. White people and Admiral Gregory, and when they were in town the sometimes—not always—called at witness' office. Witness thinks he recalls Mr. Cotter's letter of July 28, but doesn't think he discussed that letter with anybody from the Pan American Company until the meeting with Mr. Doheny in October. Witness' belief is that Mr. Doheny communicated with the Interior Department; that witness was informed of the communication, and that Mr. Doheny or Mr. Cotter or someone of the Pan Ameri-

(Testimony of John Keeler Robison.)

can Company communicated with witness, and that an appointment was arranged in witness' office where Mr. Doheny could call upon witness. Witness thinks that it was Dr. Bain that spoke to witness about this plan having been submitted to Secretary Fall and the latter favored it. Witness thinks the general subject of the fluctuation of oil prices was discussed with Secretary Fall before witness saw Mr. Doheny, and that a general decision or conclusion had been reached that it wasn't wise for the Government to meddle in any regulation of [710—627] prices whatever their interest as producer or consumer might be. Witness thinks that a general discussion was the only thing that happened as to Secretary Fall, as to Mr. Doheny's proposed plan before witness saw Mr. Doheny. Witness cannot say whether he had the plan before him then. He does not know whether he had the plan before him in any discussion with Dr. Bain before he saw Mr. Doheny. He can only fix the time when he first saw Mr. Doheny by the fact that he at that time made a memorandum of the conversation. This was made before witness discussed it with Secretary Denby, but is not certain whether it was before or after he discussed Mr. Doheny's outline of plan with Secretary Fall and Dr. Bain. He thinks it was before. He thinks he did not have a discussion on the plan in the Interior Department with Secretary Fall until after he made the memorandum. He is not certain but thinks that is so. Witness read the memoran-

(Testimony of John Keeler Robison.)

dum—Exhibit “R4”—and states that something took place in that conversation that is not set forth in this memorandum—that in connection with the proposition for the storage of the oil for Government account in California the question of the establishment of a terminal on this Coast was discussed. Witness had considerable conversation at that time concerning the accessibility of any facilities that should be made available for the Navy either on the Atlantic or Pacific coasts to the Navy tankers, which are of relatively deep draught and relatively great length. That is referred to in some particulars here, but it is not covered in full. And witness stated they talked about the use of heavy oil, heavier than Navy standard oil, the oil that was used in many commercial plants for fuel, and witness told Mr. Doheny of some experiments that they had made in that connection, of the difficulties they had experienced, and Mr. Doheny told witness of a process that they had which—the reason witness says that is because other reference has refreshed his memory in that—for improving the viscosity of fuels. Witness had written to Mr. Doheny on that subject earlier in the year and had received an answer from [711—628] him on that subject, but they discussed it at this time. They discussed the reasons for the facilities that witness was asking. Witness does not think that Mr. Doheny said anything at that time to witness about the proposition being based upon his purpose or desire to get into the production of oil in Southern California.

(Testimony of John Keeler Robison.)

He discussed the effect upon the prices of the introduction of another large refinery in this vicinity. He did not say his company could not go into the thing unless he was guaranteed oil territory and oil. The witness that said at this interview he thinks witness knew that the Interior Department and the Navy Department over a period of several years before had been in negotiation with various large oil companies, for having them hold fuel oil in commercial storage for the Navy—he knew that to have been attempted in the fall and winter of 1921 and 1922. They had found the limit which they could go in that respect. Witness thinks that he did not take that up with Mr. Doheny as a separate proposition apart from a guarantee of royalty oil and a lease of the reserves. Witness thinks he did not ask him what arrangements could be made for commercial storage of fuel oil as a separate proposition, not hooked up with this reserve proposition. Witness never thought of it in that way until after he had succeeded in accomplishing some of the provisions of the contract of December 11, 1922.

After the conference with Mr. Doheny he agreed to submit a further memorandum, and did within a few days submit further memorandum of November 6th with a letter to witness which is in evidence. There were interlineations in this further memorandum in paragraphs "c" and "d" and page number three at the top but in fact the fifth page in order. These were inserted by witness, and therefore ob-

(Testimony of John Keeler Robison.)

viously the matter contained in those insertions was a matter that was very clear in witness' mind.

The contract of December 11, 1922, was gone over very carefully by the witness before it was executed, and at that time witness thought he was entirely familiar with its provisions. [712—629] Witness thinks some differences will be found between the letter of November 6 and the contract, but these will speak for themselves. Witness was careful to compare the two and knew what was going on then. He doesn't know whether he or Secretary Denby took up the contract of December 11, 1922, with the Judge Advocate-General's Department and had them go over it. It was considered by the Judge Advocate-General and certain changes were made in it in that office or recommended by that office. Witness' recollection is that this letter Exh. 164, requesting further instructions as to what storage facilities were to be provided on the west coast of the United States including the Hawaiian Islands was written by witness two or three days prior to the time witness received knowledge of the result of the studies that had been made that led to the increase in the Pearl Harbor proposition—and that when witness wrote that letter, he had in mind to get instructions with what he should go ahead, and thinks that on November 22 he got instructions. He doesn't remember that in the discussions with Mr. Doheny, and in the discussions that led up to the letter of November 29 he dis-

(Testimony of John Keeler Robison.)

cussed the fact that Mr. Doheny had the prior and preference right to any leasing on the reserve but this was well understood by the witness. He thinks that he had a discussion with Dr. Bain in December or November, 1922, just prior to the time of this contract and while it was under discussion, to the effect that the Navy would lease the whole reserve if they got enough for it.

Witness thinks he said that—and he indeed was responsible for that being done. When witness told the Interior Department to go ahead with the contract of December 11, he said in effect, "Well, the matter is settled—we are going ahead with the additional storage; the Navy Department badly needs additional storage at Pearl Harbor. It has been decided to go ahead at once with the additional project for 2,700,000 barrels of storage at Pearl Harbor." Witness thinks that is what he said because that is what he felt at the time and undoubtedly he was speaking freely and frankly with those people, but witness doesn't think he [713—630] ever said to anybody it was uncertain witness might hold his present position—that administrations change and if the matter is postponed, the requirement of storage may never be accomplished.

The question of whether the price of oil was going up or down, or whether a refinery on the Pacific coast might alter that over a period of months or years, wasn't a matter of great consequence to witness but did interest him because it was a matter of great consequence with the Do-

(Testimony of John Keeler Robison.)

henys with whom he was doing business. That was set forth in the November 6th memorandum, or the conversation of the 27th or both. It was of interest to them. It was of some interest to the Government although that is not the sort of business the Government is engaged in. It would not have been a reason for entering into this big contract at all. It didn't affect witness in the least so far as he knows.

Mr. Doheny, so far as witness knows, never requested a lease upon the whole reserve. In his memorandum of November 6 he did set forth on separate pages various portions of the reserve that might be included in such a lease, some of them including more sections and others less, and the more he got the more he gave us. He offered different terms for different additional leases. The last page contains very few sections and that page says "No pipe line." Witness presumes the other pages don't have such reservation.

It was then stipulated by counsel that these were different choices or different suggestions, and that the only one that had a notation on was the last one, in Mr. Anderson's handwriting which said, "No pipe line."

The controlling reason for that contract so far as the Government was concerned was not a question of price maintenance or price stabilization, but was that the Navy would get this storage project under way. To witness' mind this was the most important advantage. To the mind of the

(Testimony of John Keeler Robison.)

Secretary of Navy witness believes the most important advantage was that permanent security against drainage would be secured. Witness is unable [714—631] to state that, but to witness the most important advantage was the provision of security to the nation.

The proposition of November 6 suggests areas for lease on all or part of Reserve No. 1. It contemplates a leasing of area in No. 1. At the end of the discussion about terms there was no difficulty about the other matters in the memorandum except the terms of the royalties to be inserted in the lease. There were discussions of provisions to go into the lease. As to whether other terms went into the contract practically as they are in the memorandum, it is witness' recollection that the memorandum did not provide for so much storage on the Atlantic as the Navy secured in the contract and lease—or that the memorandum included all the ports that the Navy had in the final contract. The proposition made in the first of November—witness don't know whether it was one or one and a half million barrels on the West Coast, and witness don't remember which they finally got into the contract. He thinks they got one and one-half million barrels. Of course, there wasn't in early November any consideration of the 2,700,000 barrel stuff in Pearl Harbor. They came up after November 22d obviously.

The major difficulty in the lease was about the royalties. Mr. Anderson asked for a flat 12½ per

(Testimony of John Keeler Robison.)

cent royalty and insisted on $12\frac{1}{2}$ per cent to 20% He insisted on the Interior regulation royalty, whatever that is. He asked for a flat $12\frac{1}{2}$ per cent, and insisted that he couldn't do the entire job without loss at anything in excess of regulation royalties. Witness' position was one-seventh to he thinks 35 per cent. Witness received information from the Bureau of Mines where the calculations were made as to the effect of the schemes, and thinks that such a letter will probably be a matter of record in this trial, a report from Dr. Bain. Witness don't remember what the date of the report was, but he got the information prior to December 11th. [715—632] Witness thinks he sent it to witness after that date. He wanted to be sure that he had it in his files, because it was one of the things that witness had to have to justify himself in his own mind for accepting the royalties that they did accede to.

The memorandum dated December 9th, and the letter of December 11th, signed H. Foster Bain, were given the witness at that time. These memoranda were offered and received in evidence, the letter of December 9th being marked U. S. Exhibit 263, and the letter of December 11th being marked U. S. Exhibit 264.

(Testimony of John Keeler Robison.)

U. S. Exhibit 263 reads as follows:

U. S. EXHIBIT No. 263.

"December 9, 1922.

Memorandum for Secretary:

According to the best figures available in Washington the average production per well per day at present in Naval Petroleum Reserve No. 1 is 241 barrels.

Below is listed the operating wells by section and the total number of barrels per day from each group of wells. These figures may be only approximately correct since we do not have here accurate data as to Standard Oil and Pacific runs. I passed these approximate figures over to Admiral Robison and they seemed to meet his immediate needs. If it is desirable I will ask Campbell to get more accurate figures in California, though the Standard and Pacific may perhaps not wish to give us the details."

Then the sections and the wells and the production are given. "Total, 131 wells. Production, barrels, 31,638. Average 241 barrels. Respectfully, H. Foster Bain, Director."

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(Testimony of John Keeler Robison.)

U. S. Exhibit 264 reads as follows:

U. S. EXHIBIT No. 264.

“December 11, 1922.

Rear Admiral J. K. Robison,
Room 2016 Navy Building,
Washington, D. C.

My dear Admiral:

I transmit herewith copy of a memorandum to Secretary Fall, dated December 9, regarding the present average daily production per well in Naval Reserve No. 1, and the area immediately adjacent.

Please advise me if you wish these figures worked up for a period extending over the past several years.

Cordially yours,

H. FOSTER BAIN,
Director.

Witness continuing: The summary working up the figures over a period of forty-seven months and dated December 30th, was not in witness' hands on the date of December 11th, but [716—633] this was and witness used the figures as to production and made his own guess as to the value of those royalties set forth in the contract, and witness had Doctor Bain and Mr. Ambrose each independently assure him that these were materially better royalties than the Interior Department schedule. Witness' calculation was done with a pencil and a piece of paper, but was not an engineering computation. It was sufficient, however, to corroborate the infor-

(Testimony of John Keeler Robison.)

mation that witness got from Bain. Witness thinks he could make a calculation on the average per well per day per calendar month, but did it a little bit differently to that. He had gotten other information that is not in that as to the fact that wells flow a little bit heavier to start with than they do after they have been running a year and a half. If one is leasing to exhaustion, as this lease was to be, there would not be a flush production during the fifteenth or twentieth year of the lease. The part that was really important to witness was to use the age of a well in connection with the production of it to see something about what the future might bring forth. Witness was concerned not so much with the immediate revenue as with the gross revenue to the Government. The immediate revenue would be heavier than the gross revenue with whatever system one used because the thing would run off as the wells got older. Witness went to Secretary Fall about the question of royalties. He does not think that at that time Mr. Doheny's agreement had been received, but it is witness' recollection that Mr. Fall told him that he had the old man's word for it and that he thought he would agree to it formally. From Secretary Fall's statement to witness, he and Mr. Doheny had been in personal contact on the subject and in discussion, and Mr. Fall said to witness he had gotten Mr. Doheny to agree that he would agree to a certain set of royalties which Mr. Fall handed to witness, and witness said he wanted bigger ones.

(Testimony of John Keeler Robison.)

The witness will have known at that time what royalties had been bid for small remaining tracts in No. 2 all surrounded by drillers, but does not know it now. There was 55 in No. 1—that was too high because it was one that involved a loss to the man who was drilling the well. They could not expect that to be repeated.

“Q. In speaking of the No. 2 leases I refer to the Titus leases let in June 1922, and the Equitable Petroleum Corporation lease let in July, 1922.

Mr. HOGAN.—1922?

Mr. ROBERTS.—1922, yes; five of them.

Mr. HOGAN.—I think they are in evidence.

Mr. ROBERTS.—Yes. I will get you the amounts of the royalties too. The Equitable Petroleum Lease runs from 12½ to 35 per cent in the case of oil both over and less than 30 degrees Baume. The Titus leases run from 12½ to 20 per cent—

Mr. HOGAN.—Is that up to date?

Mr. ROBERTS.—Yes, this is June 3, 1922. They run from 12½ to 20 per cent up to 100 barrels per day, and up to 69 per cent on production over 100 barrels a day in the case of oil over 30 degrees Baume, and 64 per cent for oil less than 30 degrees Baume.

Another Titus lease of the same date carries for oil over 100 barrels a day 71 per cent over 30 degrees, and 66 per cent under 30 degrees.

Another of the same leases carries 77 per cent for all oil over 100 barrels a day over 30 degrees

(Testimony of John Keeler Robison.)

Baume, and 72 per cent for all over 100 barrels a day under 30 degrees Baume.

Another Titus lease carries 69— [719—636]

The WITNESS.—For what capacity well was that?

Mr. HOGAN.—All of them from $12\frac{1}{2}$ to 20 per cent—

Mr. ROBERTS.—Up to 100 barrels.

The WITNESS.—For what capacity of well was it they were paying 69 per cent?

Mr. ROBERTS.—Well, that was untried land. That was the bid for a lease.

The WITNESS.—Well, in their bid. I just ask for information.

Mr. ROBERTS.—The testimony here shows that bidding was done in this way: The Interior Department fixed the amount of royalties that should be paid up to a 100 barrel well. Up to 20, $12\frac{1}{2}$ per cent; from 20 to 50 $14\frac{2}{3}$ per cent in cases under 30 Baume; from 50 to 100, $16\frac{2}{3}$ per cent; and then asked the bidder to say what flat royalty he would pay for all production over 100 barrels a day in any well. And the other figures I have read here are for that excess production of over 100 barrels a day."

Witness continuing, stated that he knew of the amounts of those leases, and while the figures were not quoted at the time the December 11th contract was being determined, these figures such as counsel had just read, the question of ability to get larger royalty was actively discussed and it was deter-

(Testimony of John Keeler Robison.)

mined that advertising should not be done. That is where the value came to the Pan American Company in bid B. Witness thinks at that time he made a mistake in the value to them of that preferential right. It was of real value to them then. Witness has not or did not have a calculation that he made of the relative royalties called Secretary Fall's compromise royalties and the regulation royalties. He made no calculations after the 30th of December. Throughout the whole transaction the general practice was for witness to prepare the policy letter that went over Secretary Denby's signature to the Interior Department in Naval reserve matters. Up to the end of December, 1922, cash was paid into the treasury for gas and casing-head gasoline that came out of the Naval reserve lands to California—in other words, the lessee who recovered gas or casing-head gasoline under the terms of his lease paid the royalty in whatever fiscal agent the United States designated to receive its moneys out here as cash. Witness thinks it was the contract of [720—637] December 11th covered for any wells drilled under that lease, but it did not cover prior wells on either the Pan American or any other leases. When that fact became known, there was a supplementary agreement by way of a letter exchange in which the gas and casing-head gasoline was to be used as an exchange medium for the contract for construction of storage and filling the same—the witness plugged that leak—in other words stopped that loss to the Navy.

(Testimony of John Keeler Robison.)

The Navy was not going to lose that cash to the treasury any more.

Witness does not know whether Secretary Fall had before him a copy of Mr Doheny's memorandum when Secretary Fall discussed Mr. Doheny's plan in the autumn of 1922 with witness. He does not remember seeing any memorandum sent by Mr. Doheny to the Interior Department at that time. In the November 6th letter, or whether in that October conference, the 27th of October, the Interior Department communication was referred to and in one of them he furnished witness a copy of it.

The plan for increased storage facilities was purely a naval matter, but Secretary Fall did say to witness when he discussed Mr. Doheny's plan with regard to naval reserves that he thought that plan was valuable both to the Navy and to Mr. Doheny, or would prove valuable to both of them. He was of the opinion that the suggestions offered by the Pan American Company through Mr. Doheny were not without merit from the Government's point of view.

Witness does not of course know how much or how often Secretary Fall and Mr. Doheny were in conference about this plan. Witness has knowledge of record as to the ability of the Navy to buy fuel oils and petroleum products at less than the current market price. Frequently the Navy has been able to do better than the quoted market price on fuel oil and matters of that kind. Fre-

(Testimony of John Keeler Robison.)

quently they have been able to buy petroleum products below the posted market price. It depends upon the condition of the [721—638] market. Usually with a firm market the demand for large quantity requires the payment of a premium, and in a falling market the demand for a large quantity enables you to get a price concession. During the war the conditions were widely variable. Immediately subsequent to the war the Navy was as it appears of record hampered by some hang-over war contracts that caused them to pay \$3.25 a barrel for fuel oil on the east coast so that during the period witness has been most familiar with the oil situation the matter has been rather a troubled one. Witness thinks the war is not yet over in that business.

When witness discussed this matter with Mr. Do-heny and he said that this would require the advance of a very large amount of money, witness argued to him that if he did not get that money out of the royalty, he would of course get it by act of Congress. There was no suggestion then made either by him or witness that that matter could be assured by going to Congress and having Congress authorize the contract. Witness thinks he had made plain to him prior to that time the urgent necessity of the accomplishment of the proposition at Pearl Harbor without delay.

It is a fact, of course, that the Pan American Company paid for facilities that belonged to the United States, and the Government agreed to pay

(Testimony of John Keeler Robison.)

it interest—that is, to pay the Pan American Company interest on the loan. That is what it amounted to. The Government collected interest on it. The witness expects that the Government was agreeing to pay compound interest in the contract of December 11, 1922—the Government collected compound interest, he believes, on all payments made to the Pan American Petroleum & Transport Co. in the early part of the contract. For a few months at the beginning of the contract of April 25, 1922, the Government was advancing by turning over more royalty. Witness thinks the Government must be very much their debtor at this time. The contract provided that Mr. Doheny's company would pay the Government [722—639] compound interest if the balance were in favor of the Government. The witness' recollection is that the contract provided for compound interest at 5%. The contract will speak for itself though in that respect. He thinks it does. Computed on monthly balances.

The discussion as to royalties consummated on December 8 in the final agreement to the so-called compromise royalties that Secretary Fall had turned over to witness—the papers enabled witness to fix the date, of course, and not his recollection, but he can fix it on the 6th of December—the contract was already roughly drafted at that time. It was expected confidently that they would be able to come to an agreement, and witness expected that he would get Mr. Doheny to lift the lowest royalty

(Testimony of John Keeler Robison.)

to one-seventh, but he didn't do it.

When witness reported the matter to Mr. Denby, Mr. Denby asked witness whether he had gotten the best bid he could and witness said he had, and Mr. Denby said to go ahead and close it. There was no discussion then about advertising. There was a discussion as to whether a better proposition could be had from other people, and witness told Mr. Denby that he did not believe the Government could get a better proposition than it was getting or witness would not recommend the acceptance of that. Witness didn't think Mr. Denby said, "Have you tried to get a better proposition from anybody else?" or anything of that kind. Witness don't think Mr. Denby asked witness whether witness had made any inquiry amongst the oil people as to whether he could do any better. Mr. Denby merely said to witness, "Do you think you have done the best you can" or words to that effect—it was of somewhat greater length, of course. Witness can't remember any more than he can remember—that is all—and that is all that he can remember.

The witness on being asked the day before about the proposition of the American Oil Engineering Company, said that proposition he laughed at. He didn't think he had to investigate [723—640] it much—he thought it was foolish because those people put a proposition in that witness understands as follows:—and it was upon his understanding of their proposition that he laughed. Their proposition said they would go ahead and drill the Navy

(Testimony of John Keeler Robison.)

some wells and dispose of the oil for the Navy as witness recalls it, and the Navy was to repay them all their cost and give them 12½ per cent royalty not on enough oil to repay their costs, but on the gross output of the wells forever. In other words it looked to the Navy as if the American Oil Engineering Company were risking nothing and that—they asked the Navy—they were going to drill in accordance with the Navy's plans. They did not furnish the Navy with anything except supervisory work. It looked as if it was a question of "You give me one-eighth of the naval reserves and I will say 'Thank you.' " That is the way it looks to the witness who thinks he has thoroughly stated that proposition. In the first place the company agreed to drill whatever wells the United States asked should be drilled and to look to whatever came out of the ground to reimburse them so that if they drilled dry holes they lost. [724—641]

Mr. Denby had a fixed idea that the immediate necessity was the drilling of offset wells where they were required. Witness thinks that it was his idea to keep as much of the oil in the ground as long as he could, and the policy of his department was fixed by him. Witness understood that the policy when the reserves were created was to retain as much of the petroleum as could be retained in the ground against some time when petroleum would become so scarce or so dear that the United States would need to drill on this reserve supply. The policy that was adopted in

(Testimony of John Keeler Robison.)

building this tank storage resulted in that with each barrel of oil that came out of the reserve there the Government got, let us say, one-fourth, or 30 per cent, if the royalty was high enough, and the person who drilled the reserve got the balance, and of the royalty oil that the Government got, this 30 per cent, or 25 per cent, or whatever it would be, approximately two-thirds—it is a little bit nearer 55 and 45 witness thinks—was spent for physical facilities at Pearl Harbor, and one-third was spent for fuel oil to go into it. What witness wants done if he can get it done, is that if all of the oil was to be kept, Congress could have appropriated the money to build the storage and all of the oil could have been kept [725—642] for the Navy's use, either under or above ground. Witness did not go to Congress to get it done in this instance.

Redirect Examination.

On redirect examination by Mr. HOGAN, the witness testified:

When witness said, in answer to one of Mr. Roberts' questions, that this contract was not ordinary but that it was extraordinary and unusual at that time and place, witness meant the circumstances of the particular period and the particular location were unusual and extraordinary. The fuel storage project at Pearl Harbor is the one witness is referring to.

Referring to witness' answer in cross-examination that along in April, 1922, and prior to the

(Testimony of John Keeler Robison.)

time when Secretary Fall sent Secretary Denby the former's letter of April 12, 1922, suggesting an amendment to the then pending naval appropriation bill, Secretary Fall said to witness prior to the writing of that letter, that he feared the Government would not get satisfactory bids because of doubts which "these people" had on the subject—witness stated that Bain had come back and made his report to Fall. It may be that after he got back subsequent information was received by Secretary Fall. Witness did not get such information, but may have known that such information was received. He does not recall now.

When Secretary Fall spoke to witness about the fear that satisfactory bids would not be obtained on the date the bids were opened because of the doubts "these people" had been expressing on the subject of the legality or feasibility of the plan, the people that he talked to witness about, witness presumes, were Mr. Sutro and the other gentlemen to whom Mr. Roberts invited witness' attention, and whose names he did not know.

With respect to the negotiations which led up to witness' agreeing to the schedule of royalty which is set forth in the December 11th lease with the Pan American Company, the agreement which was being made to provide these other facilities and the contemplated supplementary contract for the extension of Pearl Harbor, had a very considerable effect upon witness in agreeing to that scale of royalties because as set forth in the mem-

(Testimony of John Keeler Robison.)

orandum introduced in evidence here, the value of these facilities to the Navy was estimated by witness at a very considerable sum. [726—643]

When witness determined, as witness told Mr. Roberts, to go ahead and accept that scale of royalties without going out and advertising and seeking competition on the lease alone, these factors had the effect of persuading witness that the royalties included in the lease had an effective value somewhat in excess of the listed value, because of the value to the Navy of the special facilities or services, not measured in terms of royalty but offered by the terms of the contract and the lease of the 11th of December.

Witness knows what the experience of the Navy was in the summer of 1924 on the Pacific Coast when it sought bids for the furnishing here at San Pedro of two million barrels of fuel oil. They got it for 10% below the market price from the Pan American Company. The market price at that time was \$1.40 witness thinks and it is his recollection that the contract was made at \$1.26, and that the Standard and the Associated bid \$1.40.

Recross-examination.

On recross-examination, the witness testified as follows:

Witness did not say that he thought it was all right to cut down the royalties in that December 11, 1922, lease below what witness thought they ought to be because of the other things the Government was getting, but witness thought the other

(Testimony of John Keeler Robison.)

things were a part of the real royalty the Government was receiving. Witness considered those were part of the royalties the Government received from the contract. Witness did not add any amount to each tract for those other things—a fixed amount was of course impossible. There is in evidence a memorandum which witness made at that time wherein he considered that subject had presented it to the Secretary of the Navy, and that would be what witness thought then, so it is a good deal better than what witness thinks now. [727—644]

Thereupon it was stipulated and agreed by counsel for the parties that in response to the invitation for bids on Sections 2, 6 and 25, testified to by the witness Finney, that said witness had, complaint to request made of him while testifying, furnished certified copies of bids received for leases on said Sections 6 and 25, of Reserve No. 1; that the same were bulky and, therefore, counsel for the defendants have agreed that there may be received in evidence as exhibits the following memoranda, which contain the salient facts relating to said bids, and the said memoranda were thereupon received in evidence as Defendants' Exhibits "B5" and "C5," and they read, respectively, as follows:

DEFENDANTS' EXHIBIT "B5."

MEMORANDUM RE BIDS SECTION SIX

31-24 NAVAL RESERVE NO. 1.

Request for bids was sent to Union Oil Company, General Petroleum Company, Pan American Petroleum & Transport Company, Associated Oil Company, Pacific Oil Company and Standard Oil Company of California.

The Government fixed the royalty for oil of 30° and under at 12½ per cent up to 20 barrels, and 16⅔ per cent over 20 to 50 barrels, and for oil less than 30° Baume at 12½ per cent for wells up to 20 barrels, and 14⅔ per cent between 20 and 50 barrels, and the bidding consisted in the royalty offered for wells over 50 barrels.

Two bids were received, as follows:

	Less than 30°	Over 30°
General Petroleum	50-100 bbls. 16⅔ per cent	20 per cent
	Over 100 bbls. 20	25
Standard Oil Co.	50-150 bbls. 16⅔ per cent	20
	Over 150 bbls. 25	25

The Standard Oil Company bid on this tract in Section 6 contingent on their receiving lease for the tract bid upon in Section 2, and as they were not high bidder on Section 2, therefore their bid on Section 6 was eliminated, leaving only one bid received to be considered on this section, that of the General Petroleum, which was 16⅔ and 20 per cent for 50 to 100 barrels, and 20 to 25 per cent for over 100 barrels."

DEFENDANTS' EXHIBIT "C5."

"MEMORANDUM REGARDING BIDS SECTION 25-30-23 NAVAL RESERVE No. 1.

The Government fixed the royalty at $12\frac{1}{2}$ per cent for wells not exceeding 20 barrels, and the bidding consisted of offers of royalty on wells over 20 barrels. There were only two bids received, as follows: [728-644-A]

General Petroleum Company	Less than 30°	Over 30°
20 to 50 bbls.	14 $\frac{2}{7}$ per cent	16 $\frac{2}{3}$ per cent
50 to 100 bbls.	16 $\frac{2}{3}$	20
Over 100 bbls.	20	25
Standard Oil Company		
20 to 50 bbls.	14 $\frac{2}{7}$ per cent	16 $\frac{2}{3}$ per cent
50 to 150 bbls.	16 $\frac{2}{3}$ per cent	20
Over 150 bbls.	25	25

The Standard bid on this tract was conditioned on their receiving lease in Section 2-31-24, and as they were not high bidder for the latter tract, there was only one bid received and considered for this tract in Section 25, that of the General Petroleum Company, which ran up to 20 and 25 per cent for wells over 100 bbls.

It was recommended by Bain and approved by Finney to Fall February 4, 1922, that no lease be granted on either Section 6 or 25 in view of the unsatisfactory bids the fact that half of the proposed lease in Section 6 was within the temporary reserve to be arranged with P. O., and 'in the light of additional information gathered while in California.' " [729-644-B]

Thereupon, the following stipulation entered into by the parties, acting by their respective solicitors, was read in evidence, the plat referred to in said stipulation being marked Defendants' Exhibit "E5,"

and the same being annexed to this statement of the evidence:

"Beginning October 30, 1919, the Standard Oil Co. of California drilled eighteen (18) wells in two rows of nine (9) each, located approximately as shown on the attached plat, across the southern end of Sec. 36, T. 30 S., R. 24 E., immediately adjoining Naval Reserve No. 1 California, the south line of said wells consisting of (from west to east) wells Nos. 4, 5, 8, 14, 15, 29, 30, 31 and 17, and the north line of said wells consisting of (from west to east) wells Nos. 2, 1, 3, 9, 16, 32, 33, 34, and 25.

The respective dates upon which each of these wells was brought into production, the respective daily initial production of each well, the total production of each well from the time of its being brought in up to March 31, 1924, and the total production of these eighteen wells up to March 31, 1924, is set forth in the following table: [730—645]

Well No.	Date Started producing	Daily Initial production	Production to March 31, 1924
4	9- 7-1920	5,402	1,439,555
5	8-26-1920	4,723	969,158
8	11-25-1920	5,950	1,374,850
14	1-22-1921	4,000	810,930
15	4- 3-1921	2,073	508,425
29	5-22-1921	1,628	257,462
30	8-24-1921	270	76,476
31	8- 6-1921	204	123,891
17	3-16-1921	2,900	285,354
2	9-12-1920	1,500	377,085

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Well No.	Date Started Producing	Daily Initial Production	Production to March 31, 1924
1	2-12-1920	6,000	2,009,497
3	7-22-1920	6,000	1,752,419
9	11-21-1920	5,500	1,259,066
16	8-18-1921	200	103,113
32	5-20-1921	1,540	273,807
33	7-23-1921	287	118,147
34	8-23-1921	227	117,780
25	2-26-1921	3,896	406,587
Total			12,374,366

Beginning March 30, 1920, the Pacific Oil Company drilled seventeen (17) wells located approximately as shown on attached plat. The wells in question are in the southern end of Section 35, T. 30 S., R. 24 E., immediately adjoining Naval Reserve No. 1, California, the south line of said wells consisting of (from west to east) wells Nos. 11, 13, 14, 15, 16, 17, 18, 19 and 21, and the north line of said wells consisting of (from west to east) wells Nos. 9, 49, 51, 52, 54, 55, 57 and 22.

The respective dates upon which each of these wells was brought into production, the respective daily initial production of each well, the total production of each well from the time of its being brought in up to March 31, 1924, and the total production of these seventeen (17) wells up to March 31, 1924, is as set forth in the following table:

Well No.	Date Started Producing	Daily Initial Production	Production to March 31, 1924
11	April 21, 1922	408	116,747
13	Aug. 29, 1922	568	138,595
14	Mar. 28, 1922	895	185,811
15	June 9, 1922	71	32,017

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(Testimony of John Keeler Robison.)

Well No.	Date Started producing	Daily Initial production	Production to March 31, 1924
16	Jan. 13, 1923	63	30,231
17	Ja. 7, 1923	WW Abandoned	
18	Aug. 1, 1921	372	166,929
19	Aug. 3, 1921	67	146,596
21	Aug. 23, 1920	3,763	810,498
9	Aug. 11, 1922	1,066	270,477
49	Jan. 14, 1922	170	246,816
51	Oct. 12, 1922	246	49,270
52	Aug. 13, 1921	1,451	416,865
54	Dec. 12, 1921	564	108,170
55	Apr. 28, 1921	1,486	455,987
57	Oct. 14, 1920	2,651	803,545
22	July 26, 1920	4,889	877,771
Total			4,856,325

Beginning September 5, 1921, the Pan American Petroleum Co. and the United Midway Oil Land Co. (the latter on land now held by the Pan American Petroleum Company), drilled fourteen (14) wells, in two rows, located approximately as shown on the attached plat, [731—646] across the north end of Sec. 1, T. 31 S., R. 24 E., in Naval Reserve No. 1, California, the north line of said wells consisting of (from west to east) wells Nos. 4H, 3H, 2H, 1H, 1D, 2D, 3D, 4D, and 5D, and the south line of said wells consisting of (from west to east) wells Nos. 5H, 6D, 7D, 8D and 9D.

The respective dates upon which each of these wells was brought into production, the respective daily initial production of each well, the total pro-

duction of each well from the time of its being brought in up to March 31, 1924, and the total production of these fourteen (14) wells up to March 31, 1924, is as set forth in the following table:

Well No.	Date Started producing	Daily Initial production	Production to March 31, 1924
4 H	Jan. 14, 1922	783	142,293
3 H	May 3, 1922	50	161,456
2 H	Nov. 8, 1921	885	722,464
1 H	Sept. 30, 1921	108	74,071
1 D	Oct. 7, 1921	291	71,830
2 D	Oct. 8, 1921	222	56,789
3 D	Nov. 4, 1921	303	39,694
4 D	Nov. 10, 1921	243	71,428
5 D	Jan. 31, 1922	228	56,944
8 H	Oct. 26, 1921	185	25,737
6 D	Dec. 5, 1921	218	42,580
7 D	Nov. 28, 1921	142	28,763
8 D	Jan. 2, 1922	260	43,938
9 D	Mar. 12, 1922	132	23,728
Total			1,561,625

Beginning March 22, 1922, the Pan American Petroleum Company drilled fifteen (15) wells, in two rows, located approximately as shown on the attached plat, across the north end of Sec. 2, T. 31 S., R. 24 E., in Naval Reserve No. 1, California, the north line of said wells consisting of (from west to east) wells Nos. 9F, 8F, 7F, 6F, 5F, 4F, 3F, 2F, and 1F, and the south line of said wells consisting of (from west to east) wells Nos. 18F, 17F, 16F, 15F, 14F, and 10F.

The respective dates upon which each of these wells was brought into production, the respective daily initial production of each well, the total production of each well from the time of its being brought in up to March 31, 1924, and the total production of these fifteen (15) wells up to March 31, 1924, is as set forth in the following table:

Well No.	Date Started producing		Daily Initial production	Production to March 31, 1924
9 F	July	7, 1922	459	140,731
8 F	July	7, 1922	239	46,618
7 F	June	6, 1922	981	182,454
6 F	June	6, 1922	603	226,980
5 F	May	20, 1922	1,230	262,144
4 F	May	28, 1922	120	19,069
3 F	Jan.	27, 1923	351	57,365
2 F	July	4, 1922	127	72,102
1 F	July	4, 1922	31	11,547
18 F	Aug.	8, 1922	403	78,447
17 F	July	21, 1922	600	162,340
16 F	Nov.	6, 1922	44	63,584
15 F	Feb.	24, 1924	130	5,029
14 F	July	31, 1922	150	28,883
10 F	Sept.	28, 1922	126	61,264
Total				1,418,539

[732—647]

Thereupon the following stipulation entered into by the parties, acting by their respective solicitors, was read in evidence:

“The following is a true, correct and accurate statement of wells drilled upon the lands herein-

after described within the exterior boundaries of and adjacent to Naval Petroleum Reserve Number One, California, in the years stated and by the companies stated:

Section 36, Township 30 south, Range
23 East

Section 31, Township 30 South, Range
24 East

Section 27, Township 30 South, Range
24 East

Section 26, Township 30 South, Range
24 East

Section 35, Township 30 South, Range
24 East

Section 36, Township 30 south, Range
24 East

Section 31, Township 30 South, Range
25 East

Number		By whom drilled
Date drilled	wells drilled	
1921	10	Standard Oil Co.
1921	6	Pacific Oil Co.
1922	3	Pacific Oil Co.
1923	2	Pacific Oil Co.
1924	5	Pacific Oil Co.
1921	2	Union Oil Co.
	2	Associated Oil Co.
1922	4	Union Oil Co.
	2	Associated Oil Co.
1924	2	Standard Oil Co."

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1924	3	Associated Oil Co.
1921	19	Pacific Oil Co.
1922	13	Pacific Oil Co.
1923	7	Pacific Oil Co.
1924	11	Pacific Oil Co.
1921	28	Standard Oil Co.
1924	1	Standard Oil Co.
1921	13	Standard Oil Co.
1924	2	Standard Oil Co.

[733—647-A]

Thereupon there was offered and received, as Defendants' Exhibit "F5," letter dated New York, July 16, 1921, addressed to Secretary of the Interior Fall, at Washington, and being a reply to letter from Mr. Fall to Mr. Doheny, dated July 18, 1921, which is Plaintiff's Exhibit No. 12. Defendants' said Exhibit "F5" reads as follows:

DEFENDANTS' EXHIBIT "F5."

"My dear Secretary:

I received your letter and want to protest that I have done nothing that anyone knowing your disposition for fairness would not do under the circumstances. Nevertheless I want to express my appreciation for the complimentary way in which you mentioned me to the 'big chief.'

I note by the morning papers that Green and I are responsible for the latest revolt in Mexico. They have not even paid me the compliment of associating me with your good self this time, and I am sore about it. It is however just as false as if they had

said that the U. S. Government *was* behind it all. What won't those fellows charge up to the 'Huasteca' Company and its officials?

I am glad Mrs. Fall is to meet us at Albuquerque and remain until you reach L. A. on your trip. When do you start?

I hope you will have good weather for the visit to the parks and will have some leisure when you arrive in Los Angeles.

We will take good care of Mrs. Fall and the grandchild.

Don't work too hard this Summer, save yourself for some other day—Best regards, Be good, God Bless you. Adios.

Your friend,

E. L. DOHENY."

There was thereupon offered and received in evidence, as Defendants' Exhibit "G5," letter dated December 6, 1922, from E. L. Doheny to Albert B. Fall, the same being reply to Plaintiff's Exhibit No. 142; said Exhibit "G5" reads as follows:

DEFENDANTS' EXHIBIT "G5."

"My dear Mr. Secretary:

Upon going over accumulated mail on my desk, after my return several days ago, from my trip to Alaska, I find your letter of July 28th, confirming your telegram of that date, and now send you this belated acknowledgment.

I am greatly pleased to note that the authority which you gave to your representative at Bakers-

field, Mr. Campbell, has worked out some good results in connection with the temporary flood of oil which has increased the production beyond the capacity of the refineries in this State. The need for storing this surplus is undoubtedly the cause of the decrease in the price of oil, inasmuch as oil purchased in excess of the capacity of the refinery must be stored by the purchaser at a cost of 35¢ to 50¢ per barrel over the cost of such oil as may be treated immediately and find its way into the market. [734—648]

In connection with this situation I have developed some ideas which I desire to place before you, which I think will work out to the advantage of the Government and the oil producers, generally, in this State. I am preparing a statement of the situation here and of the plan which I would like, under certain conditions, to undertake to carry out, which will give relief of a substantial character and provide additional market for the flush, unrestricted production of the oil fields here.

I had a very wonderful trip to Alaska, enjoying the pleasure of sailing in the quiet waters of those inland seas for nearly a month. I was not looking for anything except rest, and I had a very tranquil period of absolute rest which was not coupled with any anxiety about any particular matter, although the oil situation in California had been completely upset and dislocated prior to my leaving there.

Mrs. Doheny and I both wished that you and Mrs. Fall could have been with us on the trip. Except

for the fogs and rain, which were considerable, no more ideal seas could be found for an enjoyable cruise. There was no possibility of sea-sickness as the waters were absolutely at rest wherever we went. The duty of looking out for hidden rocks and swift currents devolved upon the officers of the ship who were perfectly competent. A very wise and capable pilot had control over the helm at all times and we rested in perfect security, floating on the bosom of the waters and enjoying the sensation of looking on new scenes whenever it was light enough to observe.

You were often in our minds while we were enjoying this period of absolute leisure. There is much in Alaska to recall to the minds of the old prospector the events of the stirring times between 1880 and 1910 when that country was the mecca of all of those who respond to the lure of gold. My mind often reverted to the time when I too carried a pack and followed the winding trails which it was hoped would lead to the rainbow's end.

We bought a totem pole seventeen feet high which now graces our lawn at the Ranch.

Mrs. Doheny bought for Mrs. Fall a potlash bowl, in which the presents which are made to some favored member of a tribe are supposed to be put when they are properly used as the receptacle for the gifts of friends. She will be bringing it on to her when we come east next month.

Viewed from the standpoint of the prospector, we certainly followed the long, long trail. We

visited glaciers on land and sailed among the icebergs detached from the glaciers at sea. We listened to the stories of the old prospectors who went up the Stikine in the early '70's and followed the excitement attending the discovery of the Cassiar and Cariboo Placers. These names fell from the mouths of prospectors sitting around the campfires of the early '70's, and many a story I have heard of those trying times which tried not only men's souls but also their feet soles and their shoulders.

I am beginning to get garrulous, however, and I had better close this by saying that I had a splendid rest among the memories of a departed army of fellow-goldseekers, and that I have returned full of ginger and the desire to continue the work of development to which I have dedicated myself.

Hoping to see you at a not distant date and to find that your health and that of Mrs. Fall has been good, and that everything you are connected with is 'panning' out as [735—649] you would like, I remain with very best wishes, in which Mrs. Doheny joins me.

Yours very sincerely,

E. L. DOHENY.

N. B.—Mrs. D. tells me she forwarded the potlash bowl from Juneau.

E.L.D."

Thereupon, as Exhibit "H5," there was received in evidence a stipulation regarding the progress of the Pearl Harbor construction work, the delivery of all oil required under contract of April 25, 1922,

in which the tanks constructed at Pearl Harbor, and the cost thereof, and the value of oil received by the Pan American Company on account of the contract, to the date of the trial; the said exhibit is not set forth herein, as all of the figures and facts stipulated therein are hereinafter covered by the testimony received by the court after the filing of the memorandum opinion, on May 28, 1925, which said testimony was heard by the court July 11, 1925.

Thereupon defendants offered in evidence letter addressed to the President of the United States, White House, Washington, dated New York, March 8, 1924, signed E. L. Doheny; and counsel for the defendants having stated to the court that it was agreed that the proffer therein made may be considered as binding upon the defendant company, the same was received in evidence as Defendants' Exhibit "J5," and is as follows:

DEFENDANTS' EXHIBIT "J5."

"Dear Mr. President:

The Pan American Petroleum & Transport Company has received from the Government's attorneys, Messrs. Pomerene and Roberts, a letter in which they state that the matter of the legality of the Company's contract with the Government under which the storage facilities for naval fuel oil are being constructed at Pearl Harbor, Hawaii, has been referred to them, and that 'under present conditions we cannot advise the officers of the United States to issue any vouchers under this contract.' The Com-

pany has received no vouchers for work done since November, 1923, although the work has proceeded uninterruptedly and since that date the naval officer in charge at Pearl Harbor has issued certificates stating that work has been done during this period to the value of \$790,000.00, and the Company has made payments to its sub-contractors accordingly.

The primary reason for our company undertaking this work at actual cost without profit was because I personally [736—650] had been apprised of the necessity for this naval fuel supply station in connection with the Navy's plans for defense of our West coast, and I had promised that our Company would submit a bid to do the work and take its pay in crude oil which was then being produced in California Naval Reserves, such oil, although having been set aside for navy use, had theretofore been sold by the Government for cash which was turned into the Treasury without benefit to the Navy.

The necessity of providing for the adequate defense of the Pacific Coast, to aid which was the chief reason for my being willing that our Company should undertake this work exists today as it did then. I venture to assert that there is no question in the minds of naval officers that this fuel station should be completed.

The original project at Pearl Harbor for the storage of 1,500,000 barrels of fuel oil has been completed and the oil is in the tanks.

The additional project comprising nearly 3,000,000 barrels of storage for fuel oil and other naval

fuel is about 7/10ths completed but is useless in its present unfinished state, and to stop work on it would cause irreparable loss and leave the Navy with an uncompleted plant of no benefit whatever to it instead of perhaps the finest fuel station in the world. Approximately \$7,500,000 has already been expended on this naval fuel base and to complete the construction, as at present planned, will cost approximately \$2,000,000 more.

I have arranged that our Company, unless it is otherwise directed by you or by the Navy, shall proceed with the construction of this station to completion irrespective of whether, during the pendency of the suit which I understand is to be brought to test the legality of the contracts, the officers of the United States do or do not issue to the Company vouchers for the work done. The Company has undertaken to do this upon my personal guarantee that it will be saved from any possible loss due to the continuance of this work.

Respectfully,

E. L. DOHENY."

Thereupon, counsel for the defendants stated: "The Pan American Petroleum & Transport Company and the Pan American Petroleum Company, defendants in this action, here and now, at the bar of this court, tender themselves, severally and jointly, as ready, willing and able to perform all the obligations of the contracts and leases which are in issue in this suit."

There was thereupon presented to the court a

subpena duces tecum, issued out of this court on October 9, 1924, to Honorable Curtis D. Wilbur, Secretary of the Navy of the United States, at Washington, District of Columbia, and served on the said Curtis D. Wilbur as shown by the return [737—651] thereon, in the said City of Washington, on the 14th day of October, 1924, summoning the said Curtis D. Wilbur to appear as a witness for the defendants at the trial of this cause, and to bring with him the following documents:

“(1) Letter from the Chief of the Bureau of Engineering to the Secretary of the Navy via Chief of Naval Operations on the subject of storage of reserved fuel oil, signed by J. K. Robison, and undated, but written on or about November 20, 1922.

(2) Paper, dated November 21, 1922, and headed first endorsement from Chief of Naval Operations to Chief of Bureau of Engineering upon the subject of reserve storage facilities for petroleum products signed by A. H. Robertson, acting and containing information regarding quantity and location of reserve storage facilities provided for in the approved war plans. (3) Paper headed second endorsement, dated November 21, 1922, from the Secretary of the Navy to the Board for Development of Naval Yard Plans on the subject of fuel oil storage at Pearl Harbor, signed Edwin Denby, and advising that the department of the Navy had approved the change in the amount of the reserve of fuel oil at Pearl Harbor from 250,000 to 625,000 tons. (4) Paper, dated November 22, 1922, headed third en-

dorsement, from the Bureau of Yards and Docks to the Board of Development Navy Yard Plans, signed R. E. Bakenhaus, Assistant, and relating to the same subject as paper referred to in Paragraph (3) *supra*. (5) Paper headed fourth endorsement, dated Headquarters Marine Corps, November 27, 1922, signed John A. Lejeune, relating to the same subject as paper referred to in Paragraph (3), *supra*. (6) Paper headed November 22, 1922, to the Bureau of Yards and Docks, signed J. K. Robison, on the subject of increase in reserve storage facilities at Pearl Harbor. (7) Undated memorandum entitled 'Memorandum for Secretary of the Navy' on subject of fuel oil storage Pearl Harbor contract #4650, and 'Reference (a) Bureau letter #4650, dated October 24, 1922' signed by L. E. Gregory, Chief of the Bureau, together with the Bureau's letter, dated October 24, 1922, referred to in the above quoted reference, and any endorsements on or relating to said letter of said L. E. Gregory of October 24, 1922, which is the subject of the above quoted reference. (8) Letter written on or about September 26, 1922, from the Navy Department to the Interior Department asking for information on the subject of the availability of petroleum products on the Pacific. (9) Reply from the Interior Department to the Navy Department to letter last above mentioned in Paragraph (8), *supra*. (10) Communications, dated on or about September 15, 1920, addressed to the Secretary of the Navy, or to Chief of Operations of the

United States Navy, signed by Albert Gleaves, Rear Admiral U. S. N. (11) Cablegram or wireless message, dated on or about January 26, 1921, or January 27, 1921, addressed to the Secretary of the Navy, or to the Chief of Operations, and signed by said Albert Gleaves. (12) Letter dated on or about January 26, 1921, or January 27, 1921, addressed to the Secretary of the Navy or to the Chief of Operations, and signed by said Albert Gleaves. (13) Report signed L. C. Richardson, Commander, U. S. N. of the 'U. S. Steamship Albany' transmitted with the last mentioned [738—652] letter of said Albert Gleaves. (14) Circular or bulletin issued by the Intelligence Office of the United States Navy some time in June or July, 1921, containing excerpts from the above mentioned letter of said Albert Gleaves dated September 15, 1920. (15) All cablegrams, wireless messages, telegrams, letters, memoranda, reports or other papers or communications addressed to the Secretary of the Navy or the Chief of Operations of the United States Navy, signed by Albert Gleaves, Rear Admiral, U. S. N., between September 15, 1920, and March 31, 1921."

There was then presented to the Court the response made by the said Curtis D. Wilbur to the foregoing *subpena duces tecum*, which said response (omitting name of court and title of the cause thereof) is as follows:

"*In re subpoena (duces tecum)* directed to Curtis D. Wilbur by the Honorable Paul J.

(Testimony of John Keeler Robison.)

McCormick, Judge of the District Court of the United States for the Southern District of California on the 9th day of October, 1924.

Curtis D. Wilbur, Secretary of the Navy, hereby certifies that he has examined the above mentioned *subpoena (duces tecum)* and the papers therein described, and that all of the papers described in Paragraphs Numbered (2), (6), (8), to (14) inclusive of the said *subpoena (duces tecum)*, and certain of the papers described in Paragraph Numbered (15) of the said *subpoena (duces tecum)* consisting of forty-five (45) despatches, fifty-one (51) letters with accompanying endorsements and enclosures; fifty (50) reports and five (5) memoranda addressed to the Secretary of the Navy or the Chief of Naval Operations of the United States Navy by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920 and March 31, 1921, all of the aforesaid papers being found among the official files and records of the department of the Navy, are of the confidential nature, containing matters of importance to the nation, the disclosure of which would in his opinion be injurious to the public interests and would prove prejudicial to the government. And the said Curtis D. Wilbur as Secretary of the Navy therefore respectfully represents that he is not at liberty to furnish to the court the aforesaid confidential papers and prays that your Honorable Court will hold him excused from complying with the aforesaid *subpoena (duces tecum)* in respect of the aforesaid papers forming

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part of those described in the said *subpoena (duces tecum)*.

CURTIS D. WILBUR,
Secretary of the Navy."

There was next presented to the Court certificate of the Secretary of State of the United States, annexed to the foregoing response, as follows: [739—653]

"Department of State,
Washington.

November 1, 1924.

This is to certify that I have read the statement of the Honorable Curtis D. Wilbur, Secretary of the Navy, in response to the *subpoena (duces tecum)* directed to him by the Honorable Paul J. McCormick, Judge of the District Court of the United States for the Southern District of California on the 9th day of October, 1924, in the case of United States of America, plaintiff, vs. Pan American Petroleum Company, a corporation, and Pan American Petroleum and Transport Company, a corporation, defendants (Equity No. B 100 M). I have also caused an examination to be made of the papers described in Paragraphs Numbered (2), (6), (8) to (14) inclusive of the said *subpoena (duces tecum)*, and certain of the papers described in Paragraph Number (15) of the said *subpoena (duces tecum)* consisting of forty-five (45) despatches, fifty-one (51) letters with accompanying endorsements and enclosures, fifty (50) reports and five (5) memoranda addressed to the Secretary of the Navy

or the Chief of Naval Operations of the United States Navy, by Albert Gleaves, Rear Admiral, United States Navy, between September 15, 1920, and March 31, 1921. I concur in the view of the Secretary of the Navy that the disclosure of the contents of these papers would be incompatible with the public interest.

CHARLES E. HUGHES,
Secretary of State."

Thereupon, by agreement of counsel for the parties, the Court ordered that the said Curtis D. Wilbur be discharged from further obligation to respond to the aforesaid *subpoena duces tecum*.

The defendants thereupon rested their case in chief. [740—654]

REBUTTAL EVIDENCE OFFERED BY
PLAINTIFF.

Testimony of John McPeak, for Plaintiff (In Rebuttal).

JOHN McPEAK, called as a witness on behalf of the plaintiff, testified that he is, and in January 1922, was, secretary of the Union Oil Company of California; that he is familiar with the records of that Company; that in January, 1922, there were 500,000 shares of its stock outstanding; that not more than a dozen of those shares were in foreign ownership, in the ownership of stockholders not living in the United States; not more than a dozen individuals, and their holdings represented about a couple of thousand out of the 500,000 shares.

(Testimony of John McPeak.)

Cross-examination.

Witness McPeak on cross-examination testified that the Union Oil Company of which he is secretary, is incorporated under the laws of the State of California; that there is a Union Oil Company incorporated under the laws of the State of Delaware that owns 130,859 shares of the 500,000 shares which he referred to on his direct examination; that the stock of the Union Oil Company of Delaware is owned by the Shell Union Oil Corporation which is an American company controlled by foreigners; that that company's holding in the stock of the company of which the witness is secretary is 26 per cent.

Testimony of Charles W. Stevenson, for Plaintiff (In Rebuttal.)

CHARLES W. STEVENSON, a witness on behalf of the plaintiff, testified that he is auditor of the Lacy Manufacturing Company in Los Angeles, California, and that there was exchanged between that company and H. A. Harley, purchasing agent, Pan American Petroleum & Transport Company, the following correspondence which under the exhibit numbers indicated below were offered and received in evidence:

Plaintiffs Exhibit No. 267, telegram dated New York, November 4, 1921, reading:

PLAINTIFF'S EXHIBIT No. 267.

"Lacy Mfg. Co.,
Los Angeles, Calif.

Quote price and best erection delivery Honolulu on twenty five to thirty fifty five thousand barrel steel tanks with all connections stairs and steel roof for Doheny Company. Also price material fabricated F A S ship San Pedro, also quoting separate price for erection only as it may be possible we would prefer buying steel at New York.

H. A. HARLEY,
Purchasing Agent." [741—655]

Plaintiff's Exhibit No. 268, telegram dated Los Angeles, California, November 7, 1921, reading:

PLAINTIFF'S EXHIBIT No. 268.

"H. A. Harley, Purchasing Agent,
Doheny Company,
Equitable Life Insurance Bldg.,
New York.

Will furnish and erect twenty five to thirty fifty five thousand barrel tanks complete standard specifications Honolulu for \$19,000 each, plus cost hauling from dock to tank site. Will furnish tanks knocked down fas San Pedro for \$13,500 each. Will erect only for \$4500 each. Commence delivery about sixty days complete, rate three to four tanks per month.

LACY MANUFACTURING COMPANY."

Plaintiff's Exhibit No. 269, telegram dated Los Angeles, California, November 30, 1921, reading:

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PLAINTIFF'S EXHIBIT No. 269.

"Mr. H. A. Harley, Purchasing Agent,
Doheny Company,
Equitable Life Insurance Bldg.,
New York, N. Y.

Referring your inquiry November 5th our reply November 7th will now furnish and erect twenty five to thirty fifty five thousand barrel steel tanks complete standard specifications Honolulu for \$16,800 each, plus cost hauling dock to tank site. Will furnish tanks knocked down fas San Pedro \$11,500 each. Will erect only \$4000 each. Commence delivery about sixty days complete, rate three to four tanks per month.

LACY MANUFACTURING CO."

Plaintiff's Exhibit No. 270, letter dated New York, December 1, 1921, reading:

PLAINTIFF'S EXHIBIT No. 270.

"Lacy Manufacturing Co.,
Los Angeles, Cal.

Gentlemen:

This will acknowledge your wire of the 30th, wherein you have sent us a new quotation on 55,000 barrel tanks.

We wish to explain that this matter is still in abeyance, but in case a decision is reached in the next few days we will be very glad indeed to take it up with you further.

(Testimony of Charles W. Stevenson.)

Thanking you for the revised quotation, we wish to remain,

Yours truly,

PAN AMERICAN PETROLEUM & TRANSPORT COMPANY.

H. A. HARLEY,
Purchasing Agent."

Thereupon plaintiff offered in evidence as its Exhibit No. 271, letter dated New York, June 19, 1922, reading:

PLAINTIFF'S EXHIBIT No. 271.

"Edward L. Doheny, Esq., President,
Pan American Petroleum & Transport Co.,
120 Broadway, New York. [742—656]

Dear Sir:

In response to your request for the facts on the letting on your behalf of the tank contract for the Pearl Harbor Naval Oil Storage, I attach Navy Department printed specification No. 4650, describing on pages 6 and 7 the requirements to which the tanks contracted for must conform.

The Navy tank is markedly different from the commercial tank, on which we also have bids for comparison. It is 10 per cent less than the commercial tank in capacity and weighs 7 per cent more, making the weight per barrel eighteen per cent greater.

The Navy tanks requires larger rivets at closer center distances in keeping with the greater strength of the tank, which increases the labor cost

(Testimony of Charles W. Stevenson.)

per barrel. The requirements of erection and test are more severe, and the fact that 30 Navy tanks are required to equal the capacity of 27.2 commercial tanks further increases the labor cost per barrel.

We are advised by the Navy that its tank is made heavier and stronger in order safety to hold the oil without leakage or deterioration for many more years than the commercial tank, and in order to offer greater resistance to damage from bomb explosion resulting from aeroplane attack. Its steel roof is an increased safeguard against fire and a number of its minor features make for durability and increased effectiveness in the fighting of fire.

We sum up the design, or intrinsic, differences as accounting for a normal difference in cost per barrel amounting to 20 per cent.

The Pearl Harbor tank contract was let under keen competitive bidding and went to the lowest bidder, who was \$182,190 lower than the highest bidder and \$40,800 lower than the next lowest bidder, all bids being brought to the same basis of comparison. The bids were as follows on thirty tanks of 50,000 barrels each, April 14, 1922, being the date of the bidding:

Western Pipe & Steel Co.....	\$810,000
Petroleum Iron Works Co.....	780,000
*Pittsburgh & Des Moines Steel Co.	675,000
U. S. Steel Products Co.....	668,610
McClintic Marshall Products Co...	627,810

A bid on commercial tanks (after being brought to a basis of comparison with the above) made directly to your company by the Lacey Manufacturing Co. in November, 1921, when steel prices were considerably lower than they were in April, 1922, was for 27 commercial tanks of 55,000 barrels capacity each, as follows:

Lacey Manufacturing Co.....\$467,370

A bid on commercial tanks (after being brought to the same basis of comparison) made to us by the McClintic Marshall Products Co. on the 9th of June, was for 27 commercial tanks of 55,000 barrels capacity:

McClintic Marshall Products Co...\$529,700

You will note that the Lacey November commercial tank bid and the McClintic Marshall June commercial tank bid are 25.5 per cent and 15.6 per cent respectively lower than the figure at which the Navy tanks were let in April. If allowance is made for the rise of steel prices between November and April and between April and June, a rough comparison can be made approximately confirming from actual bidding the intrinsic difference between the cost of the Navy tanks and the cost of commercial tanks, as here pointed out. The papers supporting the above figures are in our possession, if you should wish us to produce them. [743—657]

The statement that the Navy tanks could be

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(Testimony of Charles W. Stevenson.)

delivered and erected at Pearl Harbor for \$400,000 is preposterous.

Very truly yours,

THE J. G. WHITE ENGINEERING CORPORATION,

GANO DUNN,
President.

*This figure was not considered because given after the date of the closure of the bidding."

Plaintiff then offered in evidence as its Exhibit No. 272 letter dated April 13, 1921, to Senator Owen, reading:

PLAINTIFF'S EXHIBIT No. 272.

"My dear Senator Owen:

I have given careful consideration to the subject of drilling wells on Naval Reserve No. 1 in California, and have come to the conclusion that the best interest of the Government and of the Navy will be served by inviting sealed proposals for the privilege of drilling.

I do this reluctantly because I fully appreciate the necessity for haste in the matter, but there are several applicants for the privilege and I do not know any fairer way to settle the matter than to open it to public competition which will, of course, be limited to experienced and responsible operators.

I shall have these proposals submitted both in San Francisco and in Washington which will save considerable time, and shall arrange to have all the transactions between our representatives in San

Francisco and the department carried on by telegraph.

I think you will recognize the wisdom of this decision on my part.

Sincerely yours,
EDWIN DENBY."

Thereupon there was received in evidence as Plaintiff's Exhibit No. 273 the following extract from stenographic notes of minutes of proceedings of Navy Council meeting held October 18, 1921:

PLAINTIFF'S EXHIBIT No. 273.

"9:05 A. M., Tuesday, 18 Oct. 1921.

No. 2. The Secretary stated that unless there was objection he would sign an order transferring all Fuel Oil activities heretofore carried on under the Secretary's office over to the Bureau of Engineering There was also short discussions about our supply of oil on hand, contracted for, etc.

No. 2. From notes—

Fuel Oil Office.

Secretary DENBY.—I am going to transfer (this office) unless there is some objection to it.

Capt. BAKENHUS.—If it comes to developing of oil fields, Yards and [744—658] Docks should have some office under instruction as a fuel oil engineer. That is probably a good thing if you want to create an engineering officer.

Secretary DENBY.—That is a different proposition. This Naval Reserve oil tract in California and Wyoming we have been administering. Re-

serve No. 2 in California is impossible. We can't hold it. We can't prevent granting oil leases. I by executive proclamation had it placed under the Interior Department. We are not in position to organize a new department to dig wells. I want the Interior Department when a tract is to be opened in part or full, I want them to do it for the best interest of the Navy. That matter of leasing is most difficult and dangerous thing to be done. It is full of dynamite. I don't want to have anything to do with it.

Asst. Secy. ROOSEVELT.—Admiral, how are we standing on oil now? The Shipping Board wants to know whether we have any oil.

Admiral COONTZ.—We are all fixed until the 31st of December. I don't know about from the first of January.

Admiral ROBISON.—We have more oil than we can use and it is costing us a little bit more than twice what it costs anybody else.

Asst. Secy. ROOSEVELT.—That is under contracts made about three years ago.

Admiral ROBISON.—We haven't any place to put it.

Admiral COONTZ.—We are cutting down to the bone on it.

Asst. Secy. ROOSEVELT.—Oil is going up very fast. Mexican crude has gone up from fifty to one dollar within the past week. With other contracts, we have more than enough.

Admiral ROBISON.—Our New England contract will run out about March. We have two other postponed contracts.”

Thereupon as Plaintiff's Exhibit No. 274 there were placed in evidence the following two communications dated April 14 and April 20, 1922, respectively:

PLAINTIFF'S EXHIBIT No. 274.

“April 14, 1922.

Hon. Edwin Denby,
Secretary of the Navy,
Washington, D. C.

My dear Sir:

For official purpose I would like to have a transcript of all oil leases executed covering naval reserve lands belonging to the Government since March 4, 1921, giving name of lessee, location of lease, number of acres, and consideration.

Yours very truly,
J. W. HARRELD.”

“THE SECRETARY OF THE NAVY,
Washington.

April 20, 1922.

Hon. J. W. Harreld,
United States Senate.

My dear Senator:

Replying to your inquiry of April 14, wherein you request information concerning the oil leases

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executed with regard to the naval reserve lands belonging to the Government since March 4, 1921, the following data are submitted: [745—659]

The Executive order transferring the care, custody, and operation of the naval reserves to the Department of the Interior was signed May 31, 1921, and since that date the Navy Department is not in a position to give the details of leases that may have been executed. However, between the dates of March 4, 1921, and May 31, 1921, it appears that two leases became effective, as shown below:

Lease No. Visalia 09312.
Delivered: April 19, 1921.
To: Consolidated Mutual Oil Co.
Date of Lease: February 16, 1921.
Located at: S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ N. $\frac{1}{2}$
 NE $\frac{1}{4}$, sec. 28, T. 31 S., R.
 23 E., M. D. M. 120 acres.
Back royalty paid to Government,\$171,664.34.

Lease No. Visalia 09305
Delivered: March 31, 1921.
To: Buena Vist Oil Co.
Date of Lease: August 23, 1920.
Located at: Two wells in N. $\frac{1}{2}$, SE $\frac{1}{4}$, Sec.
 32, T. 31 S., R. 24 E.
Back royalty paid to the Government, ..\$294,606.71.

I trust that this information will serve your purpose. It is quite incomplete, of course, but accurate details as to the leases that have been

(Testimony of D. W. Moran.)

entered into since May 31, 1921, can only be obtained from the Department of the Interior.

Sincerely yours,

EDWIN DENBY."

It was stipulated by the parties that the back royalty referred to in the foregoing letter amounting to \$171,664.38 was applicable to Naval Reserve No. 2.

Testimony of D. W. Moran, for Plaintiff (In Rebuttal).

D. W. MORGAN, called as a witness on behalf of the plaintiff, testified that he is petroleum accountant of the Bureau of Mines, located at Taft, California, and has charge of the accounts of the petroleum that has run from Naval Reserves Nos. 1 and 2 in California. The original records made in the field, known as the run ticket, which agree with the lessee's report submitted at the end of the month, are received by the witness, after which his office submits a statement to the lessee with request to check the same; one copy of such statement is sent to the Associated Oil Company, one copy to the Pan American Company, one to the lessee from whose lease the oil is run; these statements are made in both barrels and dollars; the dollar value is ascertained by the Standard Oil Company posted the lessee owes the Government royalty oil, the market price for oil in the San Joaquin Valley; if quality of which varies up or down, the witness

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(Testimony of D. W. Moran.)

takes the posted field price in order to calculate that indebtedness, the balances are converted into dollars and cents, and therefore the Government [746—660] is not concerned with what gravity it receives so long as it receives the valuation of the oil; that is the way the account is kept and is certified to Washington.

Plaintiff thereupon offered and there were received in evidence the following exhibits:

Plaintiff's Exhibit No. 275, on the letterhead of the Office of the Commissioner of the General Land Office, Washington, dated May 14, 1923, reading: [747—661]

PLAINTIFF'S EXHIBIT No. 275.

May 14, 1923.

“MEMORANDUM FOR SECRETARY FINNEY.

I transmit herewith a letter dated April 28, 1923, from Mr. J. H. Favorite, Chief of Field Division, San Francisco, California, relative to the lease issued to the Pan American Petroleum Company December 11, 1922, in Naval Reserve No. 1, California.

Attached hereto are also Bureau of Mines File 1175 'Pan-American Lease,' and a copy of office letter of May 12, 1923, addressed to Mr. Favorite by this office. Mr. Favorite's letter is of such character I desire to call your attention thereto. As

this lease did not originate in this office and we had no official information with regard thereto until March 12, 1923, and then upon a telephone request to the Bureau of Mines, it will be readily observed what a dilemma we find ourselves in when inquiry is made to this office, the Chief of Field Division or the local land office. Unless closer co-operation is secured in these matters by the Bureau of Mines and this office, our records, the local land office records and the Chief of Field Division's records are not noted, and on inquiry by the public, we would naturally state, as in this instance, that no such lease issued, while at the same time the oil newspapers are publishing accounts of the operations of a company under the lease, and the presumption is therefore raised that this office does not desire to make public such information.

WILLIAM SPRY,
Commissioner."

Plaintiff's Exhibit No. 276, letter dated Department of the Interior, Washington, May 22, 1923, to the Commissioner of the General Land Office, reading:

PLAINTIFF'S EXHIBIT No. 276.

"Dear Mr. Commissioner:

Referring to your note of May 14, 1923, stating that your office was not informed as to the issuance of certain leases in Naval Reserve No. 1, California,

and consequently gave erroneous advice to an inquirer, I have suggested to the Director of the Bureau of Mines that some steps be taken to apprise you of the issuance of any and all leases in naval reserves. However, in view of the fact that lands in naval reserves are subject to lease by the Secretary of the Navy under a special act, and any action taken by this Department is merely as the agent of or in connection with the Navy Department, also of the fact that some of these matters may involve naval secrets, it is not deemed advisable for this Department to place copies of the leases in the files of your office or the local offices without the consent of the Navy Department. It would seem to me that memorandum information advising as to the description of the land, date of the lease, etc., would be sufficient for your purpose.

I suggest that any requests for information as to leases in naval reserves should be referred to the Secretary's office for answer or for the latter to take up with the Navy Department.

The papers transmitted are returned.

Respectfully,

E. C. FINNEY,

First Assistant Secretary." [748—662]

Plaintiff's Exhibit No. 277, letter dated Bakersfield, California, June 26, 1922, addressed to Mr. F. B. Tough, Bureau of Mines, Washington, reading:

PLAINTIFF'S EXHIBIT No. 277.

"Dear Tough:

About three or four months ago Mr. Ambrose sent to me a lease to the Pan American for Naval Reserve No. 1 not already leased. This lease was drawn up in December and gives the Pan-American the right to drill certain wells without the approval of the Government and drill certain other wells as off sets only to patented land. The lease was sent out confidentially and we have held it so.

It is pretty hard to explain the operations of the Pan American on certain of the lands especially in sections 25 and 35, and in these cases we have stated that the Pan-American have certain offset privileges in the reserve.

Representatives of the Pan-American have apparently spread the information that they have a lease to the whole naval reserve No. 1, and it makes it very embarrassing to this office when put under question. Several companies asked the status of the land in order to bring their maps up to date, and I have been able so far to recommend that 'U. S. Government,' be placed on all land not publicly leased. However the Pacific Oil apparently has its information directly from the Pan American and has all of the Government land in the naval reserve marked 'Pan American' on its maps.

As you know, these maps are more or less spread broadcast throughout the fields. Would you inform me how much of the information we can give

out, or if none, what would be a good answer to embarrassing questions?

Very truly,
E. P. CAMPBELL." [749—663]

It was stipulated and agreed between the parties that Secretary Fall left Washington October 8, 1922, and was continuously absent from that city until November 27, 1922, on which last mentioned date he returned thereto. It was further stipulated that since December 11, 1922, the Pacific Oil Company has done no drilling within the boundaries of Naval Petroleum Reserve No. 1.

Testimony of R. P. McLaughlin, for Plaintiff (In Rebuttal).

R. P. McLAUGHLIN, a witness on behalf of the plaintiff, testified that he is a petroleum engineer, having been educated at Stanford University and having been in the oil business about fifteen years; he was geologist for the Associated Oil Company about five years and at the head of the oil department of the State Mining Bureau about six or seven years and has been in consulting practice since. In the common usage of the oil business in California the term published field price of crude oil ordinarily means published price or quotation of the Standard Oil Company of California; when oil is bought at the published field price, it is bought at the wells, and title passes to the buyer when it is gauged or measured by the purchaser on the property where it is produced. Witness has made a

(Testimony of R. P. McLoughlin.)

computation of royalties under the lease between the United States and the Pan American Company dated December 11, 1922, for under 30 degrees Baume and over 30 degrees Baume oil, and has also made a computation under the Interior Department regulation royalties and has made a graph showing where these royalties for oil under 30 degrees Baume meet, which said graph (Plaintiff's Exhibit No. 278) shows, in substance, that for average production per well per day per calendar month up to about 260 barrels the regulation royalties are better; if the well production average per day per calendar month goes over 261 barrels per day, then the lease royalties are better; witness made similar graph for oil of over 30 degrees Baume which (Plaintiff's Exhibit 279) shows that for average production per well per day per calendar month up to approximately 300 barrels a day the regulation royalties are better, and that said royalties for said average production for 261 barrels per day are better at the rates provided in the December 11, 1922, lease.

It was stipulated between the parties that there has been oil of over 30 degrees Baume produced within the borders of Reserve No. 1 from Pacific Oil Company's lands but thus far all Government lands within the reserve that have produced oil have produced oil of under 30 degrees Baume.

[750—664]

Thereupon there were offered in evidence as

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Plaintiff's Exhibit No. 280 three letters, reading as follows:

PLAINTIFF'S EXHIBIT No. 280.

"5 May 1921.

My dear Mr. Attorney General:

On or about 15 April, 1921, I advertised for proposals to lease a strip of land in Section 1-31-24, Naval Petroleum Reserve No. 1. The authority for leasing this land was conferred upon the Secretary of the Navy by a provision in the Naval Appropriation Act for the fiscal year ending 30 June, 1921.

The United Midway Oil Land Company on 20 August, 1920, filed an application for a prospecting permit for three-quarters of this section under Section 19 of the oil land leasing act of 25 February, 1920. A protest by the Department of Justice was filed, on behalf of the Navy Department, against the allowance of this application, and the application was duly rejected by the Commissioner of the General Land Office and by the Secretary of the Interior. In rejecting this application the Secretary of the Interior in a letter to the Commissioner of the General Land Office on 8 November, 1920, stated that 'no sufficient ground appears for favorable consideration' under Section 19 'by its own terms,' or 'under any other provision of the act in question, and accordingly the application is denied, the case closed, and the record returned herewith.'

After the rejection of the claim under Section 19 of the Leasing Act the United Midway Oil Land Company applied for a reconsideration of this action and invoked the provisions of Section 18 (a) of this same Act of 25 February, 1920.

By letter of 24 February, 1921, to the Commissioner of the General Land Office, the Secretary of the Interior at that time declined to submit the matter to the President and stated 'I cannot find that there is any such claim or controversy pending in this Department or in the courts with respect to this piece of land as would warrant my recommending to the President a compromise under Section 18 (a). While as stated, the good faith of claimants is not questioned, they have not a mining claim which could be made the basis of patent, or which really constitutes any valid claim as against the United States, for the reason that while the location was made prior to withdrawal and expenditures made as noted, no discovery of oil or gas was made, nor was work diligently carried on from 1910 to the present time. The petition must therefore be denied.'

Upon receipt of notice of this denial, it appears that the company applied, on 25 February, 1921, directly to the President for consideration of its application and appropriate compromise. The President referred the matter to the Secretary of the Interior for report, and a report thereon was submitted to him on 2 March, 1921. Apparently no further action was taken by the President, and the

matter remained pending at the White House until 19 April, 1921, when the Company called the attention of the President to its claim. On 20 April, 1921, the President referred the matter to the present Secretary of the Interior for report and so far as I am advised the latter is now considering the question.

On 21 April, 1921, the Secretary of the Interior requested me, if not incompatible with public interest, to revoke or suspend the leasing of the land advertised for leasing insofar as it related to the land covered by the United Midway Oil Land Company's application, [751—665] pending further consideration of their claim. While I did not consider it advisable to revoke the proposals for leasing I did decide to suspend the opening of the bids until such time as the question at issue can be settled.

In view of the fact that the original protest against the granting of relief to this company was filed by representatives of the Department of Justice on behalf of the Navy Department and in view of the fact that I am advised by officials of the Navy Department conversant with the record in this case that the claimant is not entitled to any relief under any section of the Leasing Bill or under any other circumstances, I would be pleased to have your opinion as to the legality of their claim.

There is enclosed herewith a copy of a letter written to Lieut. Comdr. I. F. Landis, from Mr.

H. F. May, Special Assistant to the Attorney General, who has handled the oil land cases in California for the past few years, in which Mr. May expresses his opinion relative to the merits of this claim.

It is contended by officials of the Navy Department that the validity of the locations of this land is in question, the locators apparently being known as the 'McMurray locators,' who were held by the recent Secretary of the Interior to be 'dummy' locators; and that the present claimants are not entitled to any relief whatsoever under any section of the Oil Land Leasing Act or any other Act due to the fact that no discoveries of oil or gas were made and to the further fact that they showed lack of due diligence under the law in the prosecution of their development both at the time of withdrawal and subsequent thereto.

From an examination of the record it appears that by far the major portion of the expenditures alleged to have been made by this company were on Section 12-31-24, and not on Section 31-124; furthermore, the well on which practically all of their expenditures were made was drilled on Section 12 and came in as a dry hole. No work appears to have been done after the drill hole came in on Section 12, although something like eleven years have elapsed since that date. The Company claims that they wished to respect the President's withdrawal order of 2 July 1910, but they apparently did not respect the original withdrawal order of 27 Sep-

tember 1909, and they reached this conclusion only after their drilling developed a dry hole. It would seem that, if their contentions are correct, they would have been fully protected in their claim by the Pickett Act of 25 June 1910. It should also be noted that the drilling contract under which operations were conducted required, not diligent prosecution of work on all claims, but merely the drilling of one well at a time—the first and only well drilled was the one on Section 12.

From their own affidavits comparatively little work was done on Section 1, and water pipes were led only part of the way to this section. Apparently very little work of any character was done on Section 1 during all the time that the well was being drilled on Section 12, and the comparatively nominal sum spent by the Company on Section 1 does not entitle them to preferential rights to this now very valuable property. Moreover, the present value of this section is in no way whatsoever due to any development or discoveries on their part.

Owing to the urgent necessity of drilling a number of offset wells on this Section in order to counteract the drilling by outside operators on the adjoining section thirty-six it would be appreciated if an early opinion on the matter in question could be furnished.

Apropos of Section 18 (a) of the Oil Land Leasing Act, I would also be pleased to have an opinion on the construction to be placed on the clause 'the

President is hereby authorized at any time *within twelve months* after the approval of this Act, etc.' That is to [752—666] say, does the Act require the compromise and settlement to be made within twelve months of the approval of the Act, or does it merely require that the request for compromise and settlement be made within the twelve months?

Aside from the legality of the claim of the United Midway Oil Land Company, and assuming that the former Secretary of the Interior was within his rights in denying their application for compromise under Section 18 (a), is it not a fact, under a strict interpretation of this section, that the time limit for making application had expired when they made their applications on 25 February 1921.

Sincerely yours,

EDWIN DENBY.

Hon. H. M. Daugherty,

Attorney General.

Department of Justice,

Washington, D. C."

"5 May, 1921.

Hon. Albert B. Fall,

Secretary of the Interior,

Interior Department,

Washington, D. C.

My dear Mr. Secretary:

I am enclosing herewith for your information a copy of a letter which I am forwarding to the Attorney-General in connection with the United

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Midway Oil Land Company's request for compromise under Section 18 (a) of the Oil Land Leasing Act.

Sincerely yours,

EDWIN DENBY."

"Department of the Interior.
Washington.

May 11, 1921.

Personal

The Honorable

The Attorney General.

Dear Mr. Attorney General:

The Secretary of the Navy has forwarded me a copy of his communication to you of May 5, 1921, with respect to the claim of the United Midway Oil Company for lands in Secs. 1 and 12, T. 31 T. 24, naval petroleum reserve, California. I note that he asks your opinion—

- (1) As to legality of the company's claim.
- (2) As to whether the President has authority to compromise under section 18a of the leasing act of February 25, 1920, an application filed prior to February 25, 1921, but not actually acted on and approved by the President prior to the latter date. [753—667]

It is clear from the record that the United Midway Oil Company has no enforceable legal right for a patent or a lease upon the lands claimed. Its claim is purely an equitable one, the consideration and allowance of which rests solely in the discretion of the President. Any opinion from

you as to the legality of the claim would therefore seem unnecessary. As to the second proposition presented, I have to advise you that the matter was submitted to the President for consideration by this Department in another case some time ago, and the President did determine that he had authority to authorize the settlement of the claim under section 18a of the leasing act where the claim had been filed in the Interior Department prior to February 25, 1921, although it did not actually reach the President until after that date.

Kindly advise me at your early convenience as to whether or not you think it necessary to render any opinion upon the questions presented.

Respectfully,

ALBERT B. FALL,
Secretary." [754—668]

It was stipulated by counsel for the plaintiff that they have been unable to find record of any answer from the Attorney General to the foregoing.

It was stipulated by counsel for the parties that Harry M. Daugherty, if called as a witness, would testify that as Attorney General he was not asked for and did not render any opinion relating to the contracts and/or leases in suit.

Thereupon plaintiff rested in rebuttal.

In surrebuttal offered by defendants it was stipulated and agreed between counsel for plaintiff and defendants that under the lease dated June 5, 1922 (Exhibit "F" to the Amended Bill of Complaint), there had been produced, up to the end of Septem-

ber, 1924, 351,919.70 barrels of oil; there had been rendered and accounted to the Government as royalty of that production 83,940.35 barrels; under the Interior Department regulation royalties, had they prevailed, there would have been accounted to the Government of that production 65,830.55 barrels. Under the lease dated December 11, 1922 (Exhibit "D" to the Amended Bill of Complaint), there had been produced, up to September 30, 1924, 2,857,092.66 barrels, of which the Government had received as royalty, at the schedule of royalties set forth in said lease, 720,065.78 barrels; the Government would have received, had the lease contained the Interior Department regulation royalties, 554,428.19 barrels. Under both leases in issue in this case there had been produced up to the 30th day of September 3,209,012.36 barrels, of which the Government had received as royalties under the lease schedules 804,006.13 barrels, and under the regulation Interior Department royalties the same production would have yielded the Government 620,258.74 barrels.

The authenticity of the documents received in evidence in this case was admitted by the solicitors for all of the parties hereto. It was further stipulated that all signatures appearing on any of said documents were the genuine signatures of the persons whose names appear as signers, made in each instance with his own hand, there being no names signed by, or per, any other persons.

Thereupon the plaintiff by its counsel announced

to the Court that it had no further evidence to offer and the defendants made like announcement.

Thereupon the defendants, jointly and severally, moved that the Court strike out and disregard evidence, oral and documentary, heretofore conditionally received by the Court and received subject to the reserved and allowed right of the defendants to move to strike out same at the close of the evidence. A separate motion was submitted as to the testimony of each witness and to each exhibit which was received over objection of defendants as hereinbefore shown in this statement of evidence, and there was repeated in opposition to said evidence the grounds of the objections stated at the time of the receipt thereof, and there was added the ground, stated to the Court, that the plaintiff had failed to "connect up" with the defendants and with the issues in this case evidence received upon the assurance of its solicitors that said evidence would be so connected up. Each of said motions were separately submitted and considered by the Court and the same are not set forth herein fully as that would constitute repeating what is set forth hereinbefore as aforesaid, and said motions were not submitted as a series; each was addressed to the Court separately without reference to any other. Whereupon the presiding Judge announced that he had no reason to change his opinion on the admissibility of any of the said evidence as indicated by his rulings admitting the same in evidence, and ruled that "the motions will each be respectively

denied." To each of the said rulings of the Court the defendants duly noted an exception.

The trial of this case began October 21, 1924; plaintiff's evidence in chief was introduced on October 22 to October 30, inclusive; defendants' evidence in chief was introduced on October 30 to November 7, inclusive; plaintiff's rebuttal and defendants' surrebuttal evidence was heard by the Court November 12, 1924. The Court heard oral argument November 13 to 18, inclusive.

Thereafter there was filed in the court the respective requests of the parties for findings of fact and conclusions of law (which are elsewhere [755—669] included in the record on appeal) and on May 28, 1921, the District Judge filed 91 findings of fact and 14 conclusions of law and on the same date filed his "Memorandum opinion" in the case (said findings, conclusions, and opinion are included in the record on appeal).

Thereafter, on the 11th day of July, 1921, counsel for the respective parties appeared before the court and counsel for the plaintiff informed the presiding judge that since the said 28th day of May the plaintiff and the defendants have had their accountants working upon the accounting contemplated by the Court's opinion and findings; that the items are very few and the figures thereof not the subject of any dispute; that the defendants have thrown open all of their books and records to the plaintiff and the plaintiff's records have been open to the defendants; that the parties join in requesting that instead of a reference to a Master

for the purpose of stating the accounts in accordance with the Court's above-mentioned opinion, the accounting be taken in open court. Counsel for the defendants having stated that the defendants join in this request, the Court ordered that the procedure so requested be followed. Thereupon, on the 11th day of July, 1921, testimony was offered to the Court tending to prove that the books of account of the defendant Pan American Petroleum Company had been audited by accountants of the public accountant firm of Ernst and Ernst, employed by the plaintiff for this purpose, said auditing being in charge of a certified public accountant; that the books of the defendant Pan American Petroleum & Transport Company containing the accounts relating to the construction done and the oil supplied under the contracts of April 25 and December 11, 1922, have been audited by the accountant of the Bureau of Mines; that all accounts relating to the matters involved in this suit have been properly and accurately kept by defendants and the plaintiff; that all of the construction work covered by the contract of December 11, 1922, had since the trial and before this time been entirely completed and that the officials of the Navy in charge thereof at Pearl Harbor had so certified to the Navy Department at Washington; that vouchers showing all expenditures on account of the construction work done at Pearl Harbor under the contracts of April 25, 1922, and December 11, 1922, and showing the delivery of fuel oil in tanks under the first of said contracts, were all certified by

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[756—670] the naval officers on the job at Pearl Harbor and sent to the Bureau of Yards and Docks in Washington and there certified by Rear-Admiral L. E. Gregory, chief of that Bureau, and thence were sent to the offices of the Pan American Petroleum & Transport Company; that the value of all royalty oil, gas and gasoline delivered or caused to be delivered by plaintiff to the defendant Pan American Petroleum & Transport Company under the provisions of the contracts of April 25, 1922, and December 11, 1922, to and including May 31, 1925, amounted to \$7,889,759.21; that the said defendant had received a profit upon the resale of said royalty oil amounting to \$791,012.03; that interest at 7 per cent per annum upon the first of the above-mentioned sums to May 31, 1925, calculated upon monthly balances, amounts to \$684,625.55; that interest on the second of the above mentioned items at 7 per cent per annum to May 31, 1925, calculated upon monthly balances, amounts to \$94,351.36; that on this basis the total amount to be debited against said defendant is \$9,459,748.15; that the actual cost of the Pan American Petroleum & Transport Company of the storage facilities completed and installed at Pearl Harbor, Hawaii, under the contracts of April 25, 1922, and December 11, 1922, and the construction thereof, amounted to \$7,350,814.11; that interest on said amount at 7 per cent per annum from May 31, 1925, calculated upon monthly balances, amounted to \$820,922.43; that the cost price to said defendant of fuel oil delivered to said tanks so as aforesaid

constructed by said defendant amounted to \$1,986,-142.47, and the interest on said last mentioned sum at the rate of 7 per cent per annum to May 31, 1925, calculated on monthly balances, amounted to \$259,569.11; that the total thus credited to the said defendant is \$10,417,448.12, and that after deducting the total debited as above set forth from the total thus credited, the balance shown to be due Pan American Petroleum & Transport Company on account of all construction work and the supplying and delivering of fuel oil in accordance with the terms of the April 25 and December 11, 1922, contracts which are Exhibits "B" and "C," respectively, to the Amended Bill of Complaint in this case, amounts to \$957,699.97; that the value of the total amount of oil, gas and other petroleum products (other than royalty oil, gas and gasoline belonging to the plaintiff and included in the amounts above testified to) produced, taken and extracted or removed by the defendant Pan American Petroleum Company from the [757—671] lands covered by the lease of June 5, 1922, and the lease of December 11, 1922, which documents are Exhibits "F" and "D," respectively, to plaintiff's Amended Bill of Complaint in this cause, to the date of the appointment and the taking possession of said lands by the Receivers of this Court, amounts to \$1,556,-861.17; that interest on said amount at 7 per cent per annum calculated upon monthly balances to May 31, 1925, amounts to \$170,650.02; that the total of these two last mentioned amounts is \$1,727,-511.19, and that that sum in the audit made as

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aforesaid has been debited to said defendant Pan American Petroleum Company; that the said defendant actually expended in drilling, putting on production, and maintaining and operating production of all wells drilled under said leases of June 5, 1922, and December 11, 1922, and in making other useful improvements to the property covered by said leases, to the date of the appointment of and taking possession of said lands by the Receivers of this Court, the sum of \$1,013,428.75; that the said defendant further actually expended in constructing, maintaining and operating the compressor and absorption plant on the northeast quarter of Section 3-31-24, less the value of the use of same to said defendant in treating products from lands other than those covered by the leases in controversy in this case, and less the gasoline manufactured and sold from gas produced from said lands in controversy, to May 31, 1925, the sum of \$194,991.01; that interest on the two last mentioned sums at the rate of 7 per cent per annum to May 31, 1925, calculated upon monthly balances amounts to \$161,060.43; that the total of the last three mentioned sums constitutes the total amount credited to said defendant in said audit and said total is \$1,369,480.19; that by deducting the amount credited said defendant as aforesaid from the amount debited it as aforesaid shows a balance of \$358,031.00; that all expenditures made and included in the sums aforesaid were properly accounted for and vouchered and that the work for which said sums were expended was done under

proper supervision, in an economic and efficient manner, and the said improvements were all of the full value paid therefor to the lands covered by the aforesaid leases; that the naval officers in charge of the work at Pearl Harbor and the Chief of the Bureau of Yards and Docks of the Navy Department at Washington have certified to the final completion to the satisfaction of the Navy Department of the construction work under contracts of April 25, 1922, [758—672] and December 11, 1922, and of the supplying and delivery of all the fuel oil, of naval specification quality, required under the April 25, 1922, contract, the quantity of such oil delivered by defendant Pan American Petroleum & Transport Company into the tanks constructed under the April, 1922, contract being 1,453,274.94 barrels.

Thereupon, on the said 11th day of July, 1925, the Court made and filed in the cause additional findings of fact, bearing said date, and being numbered 92, 93 and 94 (said findings are set forth elsewhere in the record).

The foregoing statement of evidence, together with exhibits therein included and hereto appended, constitute the substance of all the evidence offered by plaintiff and the defendants, and received by the Court, in this case, and upon which final decree of the District Court of the United States for the Southern District of California was made and entered the 11th day of July, 1925. Where herein there appears omission of exhibits the same represent documents identified, and marked with the

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missing exhibit numbers or letters, but not received in evidence.

CONSENT TO APPROVAL OF STATEMENT OF THE EVIDENCE.

The solicitors for the United States in the above-entitled cause hereby acknowledge service of notice of the lodgment by defendants in the office of the Clerk of the District Court of the United States, in and for the Southern District of California, Northern Division, of the foregoing statement of the evidence in said cause, together with exhibits appended thereto, and also acknowledge the receipt from the solicitors for the said defendants prior to said lodgment of copy of said statement and exhibits; and the plaintiff, having by its solicitors examined the said statement of the evidence and found the same to be true and complete, they hereby waive the ten days' notice of time and place when the defendants will ask the United States District Judge who heard this case to approve the said statement, and hereby consent to the approval thereof forthwith.

Dated at Los Angeles this 15 day of July, 1925.

ATLEE POMERENE,

OWEN J. ROBERTS,

Solicitors for the Plaintiff, the United States of America. [759—673]

CERTIFICATE OF APPROVAL OF STATE- MENT OF EVIDENCE.

BE IT REMEMBERED that the foregoing cause was instituted in this Court by an original

bill of complaint filed by the plaintiff, the United States of America, on the 17th day of March, 1924; that the parties stipulated that the case be heard and all proceedings therein be had at Los Angeles, California, with the same force and effect as if the said hearings and proceedings were had at Fresno, California; that before answers were filed the Court, the defendants consenting, granted plaintiff leave to file an Amended Bill of Complaint which was duly filed pursuant to said leave on the 22d day of April, 1924; that the defendants filed their joint answer to the said Amended Bill of Complaint on the 8th day of May, 1924, and the cause has been heard upon the issues arising from said Amended Bill of Complaint and said answers without reference to the original Bill of Complaint; that the case came on for trial and was heard at the times and in the manner set forth in the foregoing statement of the evidence; that all objections to the admission and exclusion of evidence as set forth in the said foregoing statement were made at the times as therein indicated and said objections and the exceptions reserved to the rulings of the Court thereon were duly entered of record. The foregoing statement of evidence was duly lodged in the office of the Clerk of this Court by the solicitors for the defendants and notice of such lodgment duly given the solicitors for the plaintiff, all as provided by Federal Equity Rule 75 (b); that the solicitors for the plaintiff have formally waived the ten days' notice of time and place when solicitors for defendants will ask the Court to approve

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said statement of the evidence and have consented to said approval forthwith.

WHEREFORE, the Court finding the foregoing statement of the evidence to be true, complete, and properly prepared, the same is hereby approved this — day of July, 1925.

By the Court:

PAUL J. McCORMICK,
United States District Judge, Southern District of
California. [760—674]

vs. United States of America.

1205

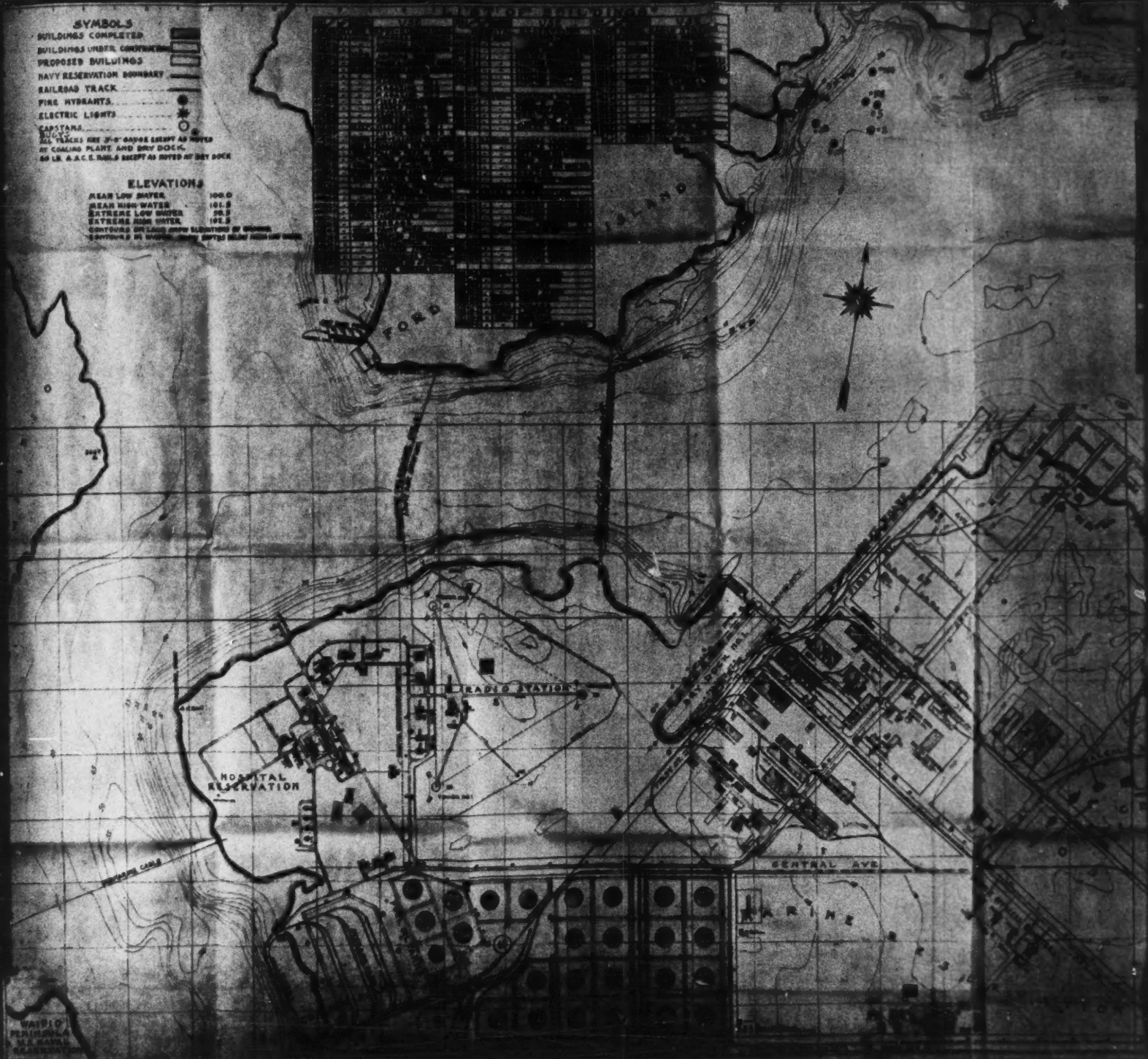
PLAINTIFF'S EXHIBIT No. 131.

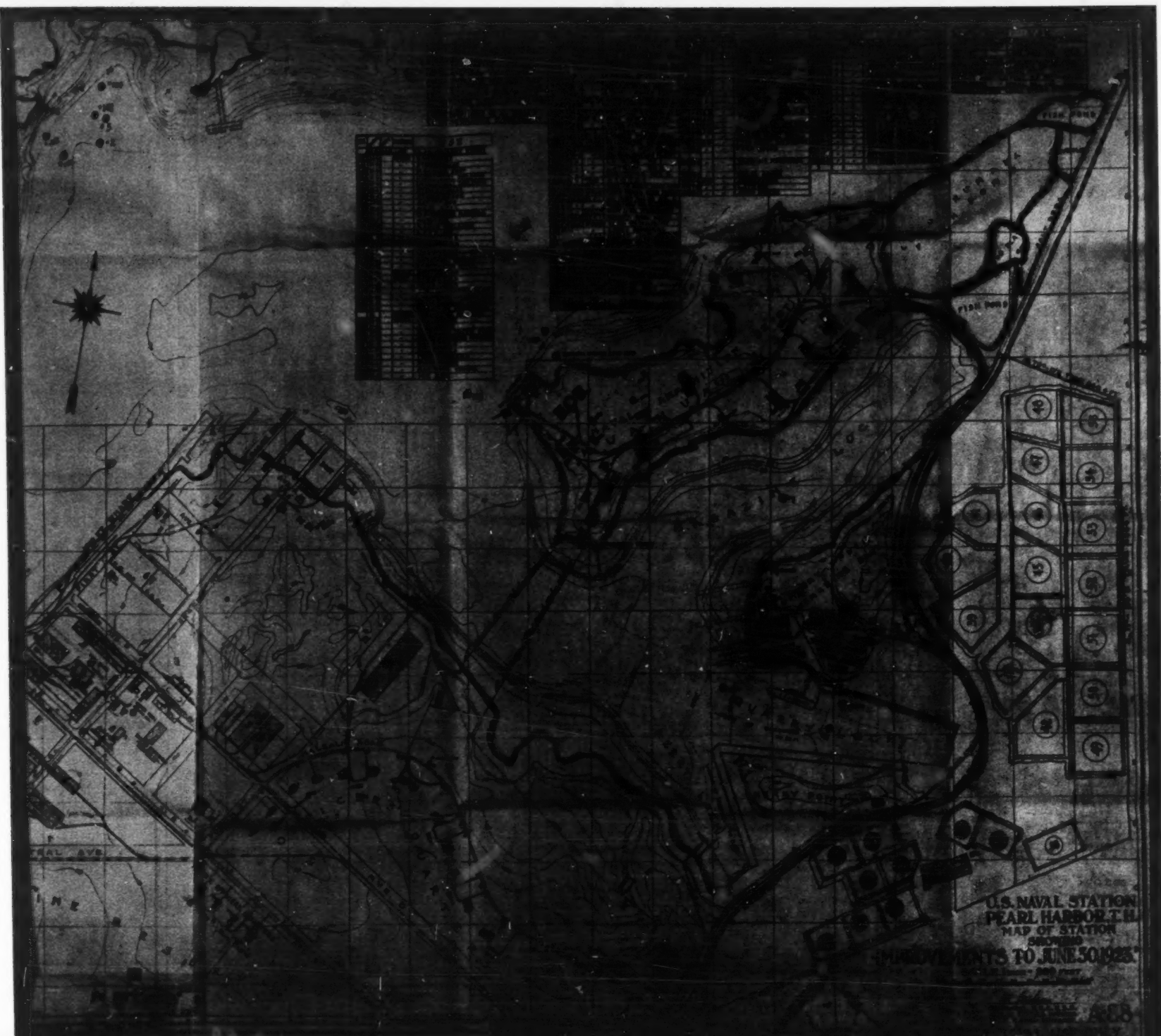
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BUILDINGS COMPLETED
BUILDINGS UNDER CONSTRUCTION
PROPOSED BUILDINGS
NAVY RESERVATION BOUNDARY
RAILROAD TRACK
FIRE HYDRANTS
ELECTRIC LIGHTS

ALL TRACKS ARE 3'-0" GAUGE EXCEPT AS NOTED
AT COALING PLANT AND DRY DOCK.
60 LB. A.C.E. RAILS EXCEPT AS NOTED AT DRY DOCK

MEAN LOW WATER	100.0
MEAN HIGH WATER	101.5
EXTREME LOW WATER	99.5
EXTREME HIGH WATER	102.5
CONTOURS OF LAND SHOW SLOPING OF CHANNEL	
SLOPES IN CHANNEL FROM MEAN LOW WATER TO MEAN HIGH WATER	





U.S. NAVAL STATION
PEARL HARBOR, T.H.
MAP OF STATION
REVISED
TO JUNE 30, 1923

U.S. NAVAL STATION
PEARL HARBOR, T.H.



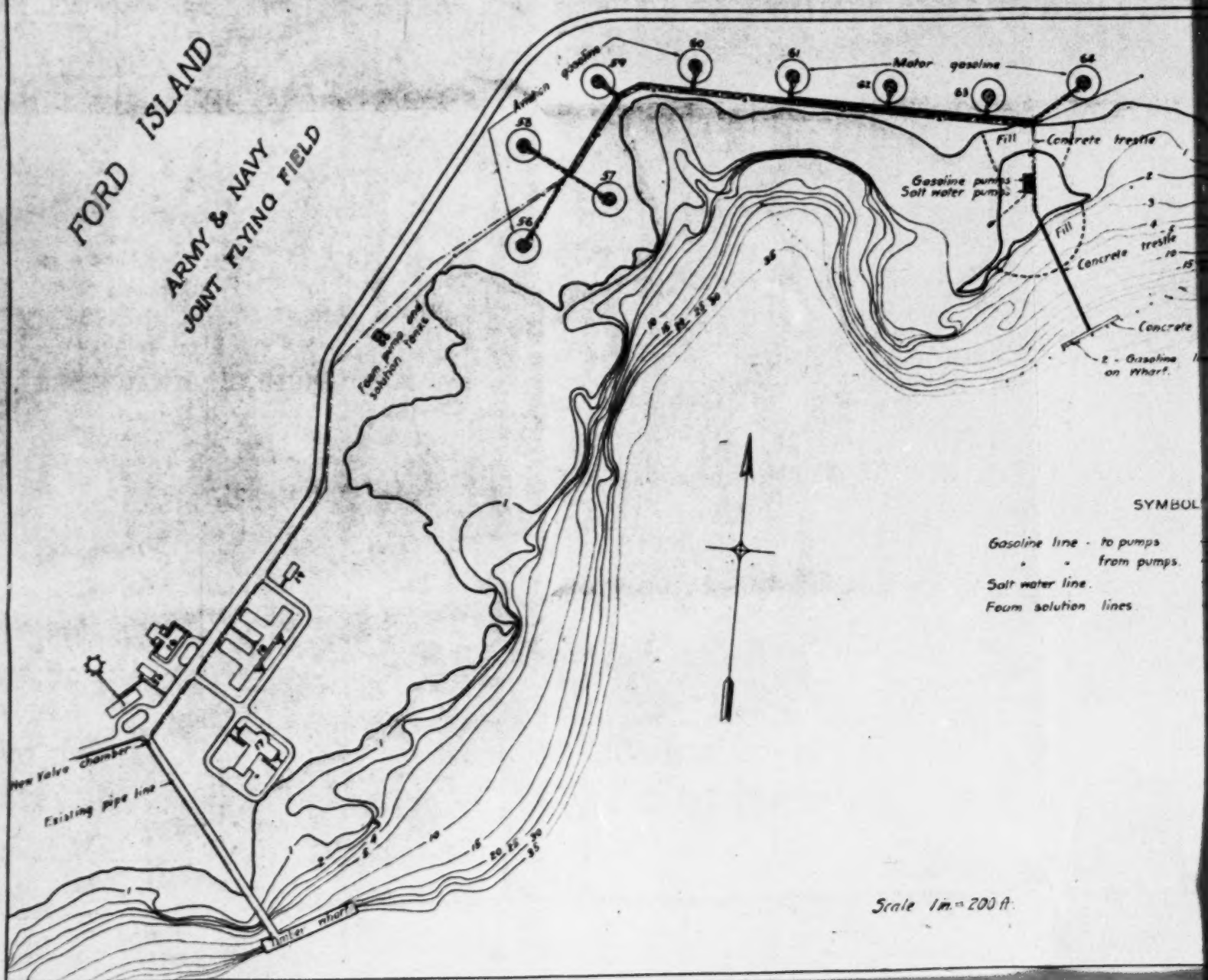
vs. United States of America.

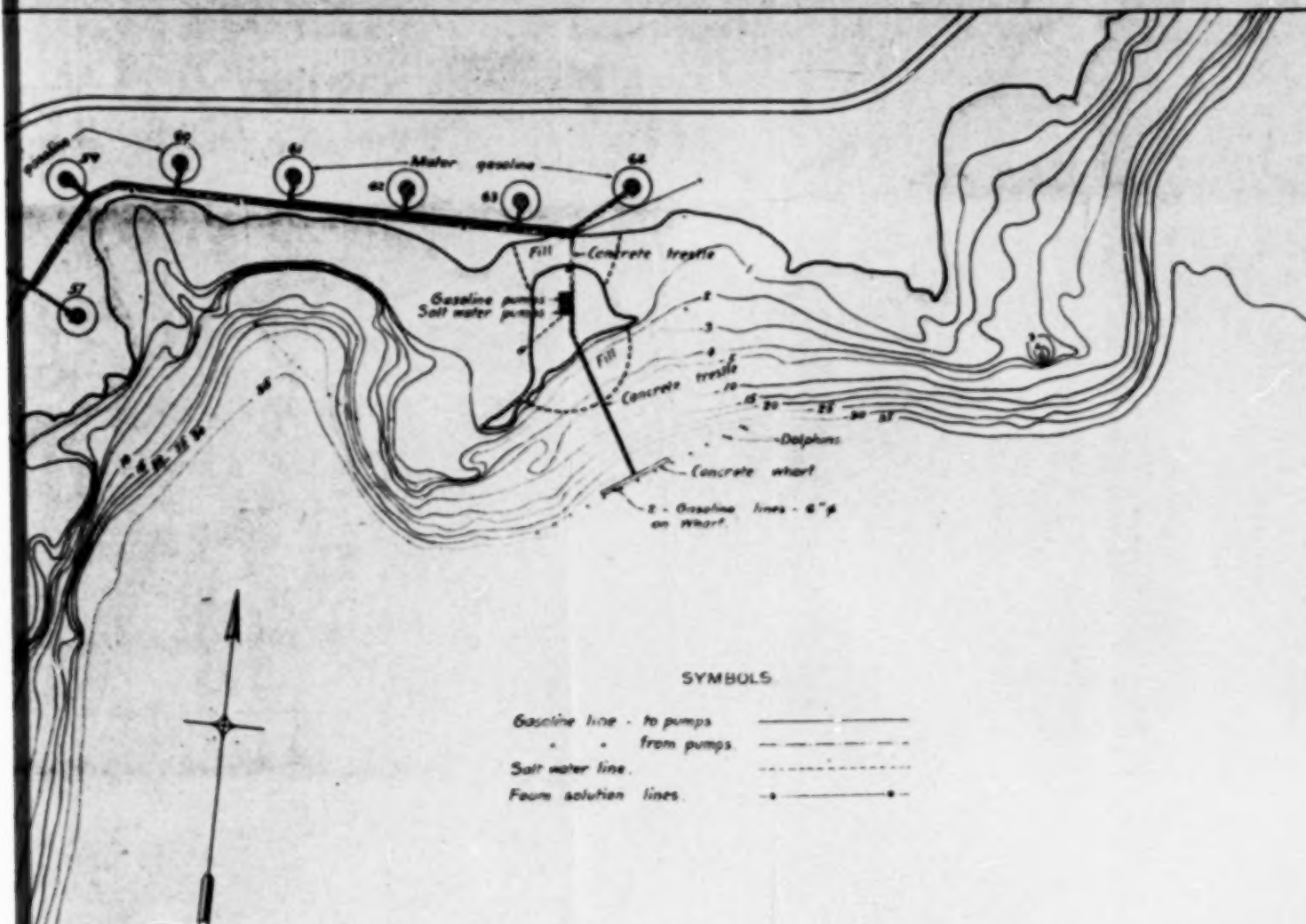
1207

PLAINTIFF'S EXHIBIT No. 132.

FORD ISLAND

ARMY & NAVY
JOINT FLYING FIELD





SYMBOLS

Gasoline line - to pumps —————
 " " from pumps - - - - -
 Salt water line
 Foam solution lines — • — • — • —

Scale 1 in. = 200 ft.

Department of the Navy Bureau of Yards & Docks
 U.S. NAVAL STATION, PEARL HARBOR TH
 ADDITIONAL GASOLINE STORAGE
 FORD ISLAND
 GENERAL PLAN

Approved Jan. 12 1923

Chief of Division

Project Manager

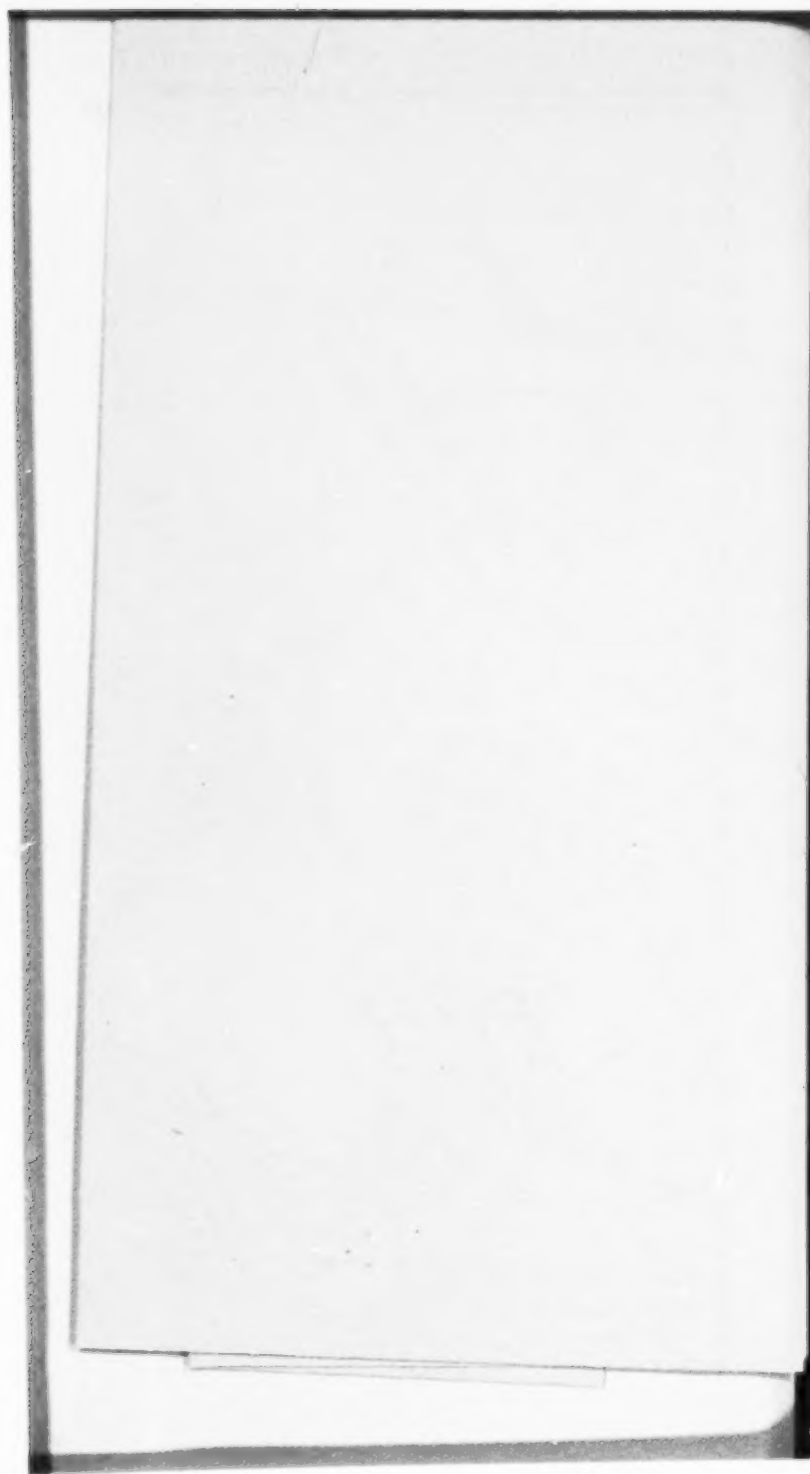
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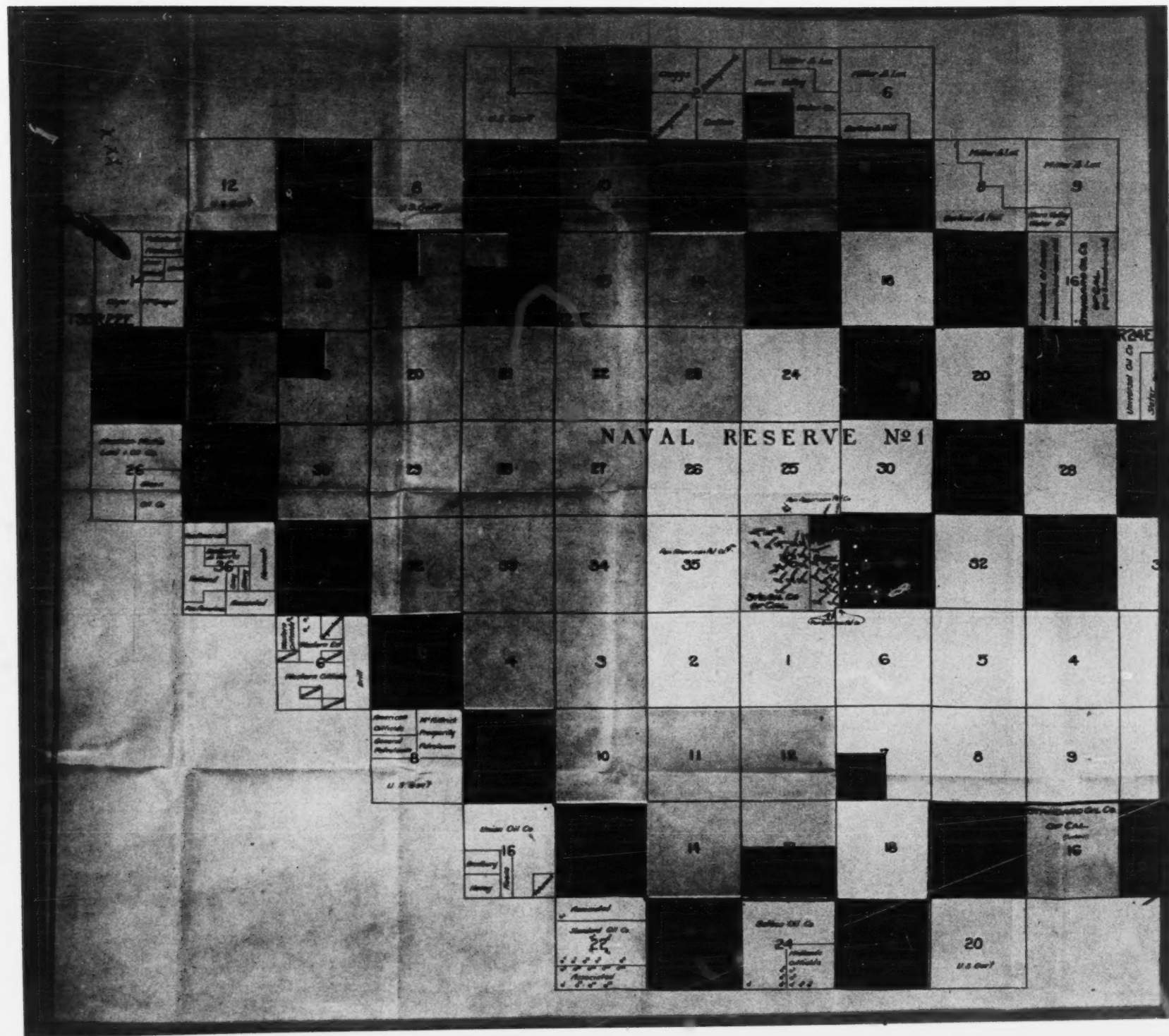
Specification
 No. 4800

Refer to Y & D.

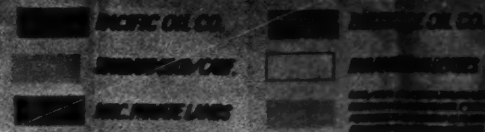
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DEFENDANTS' EXHIBIT "XXX."



LEGEND

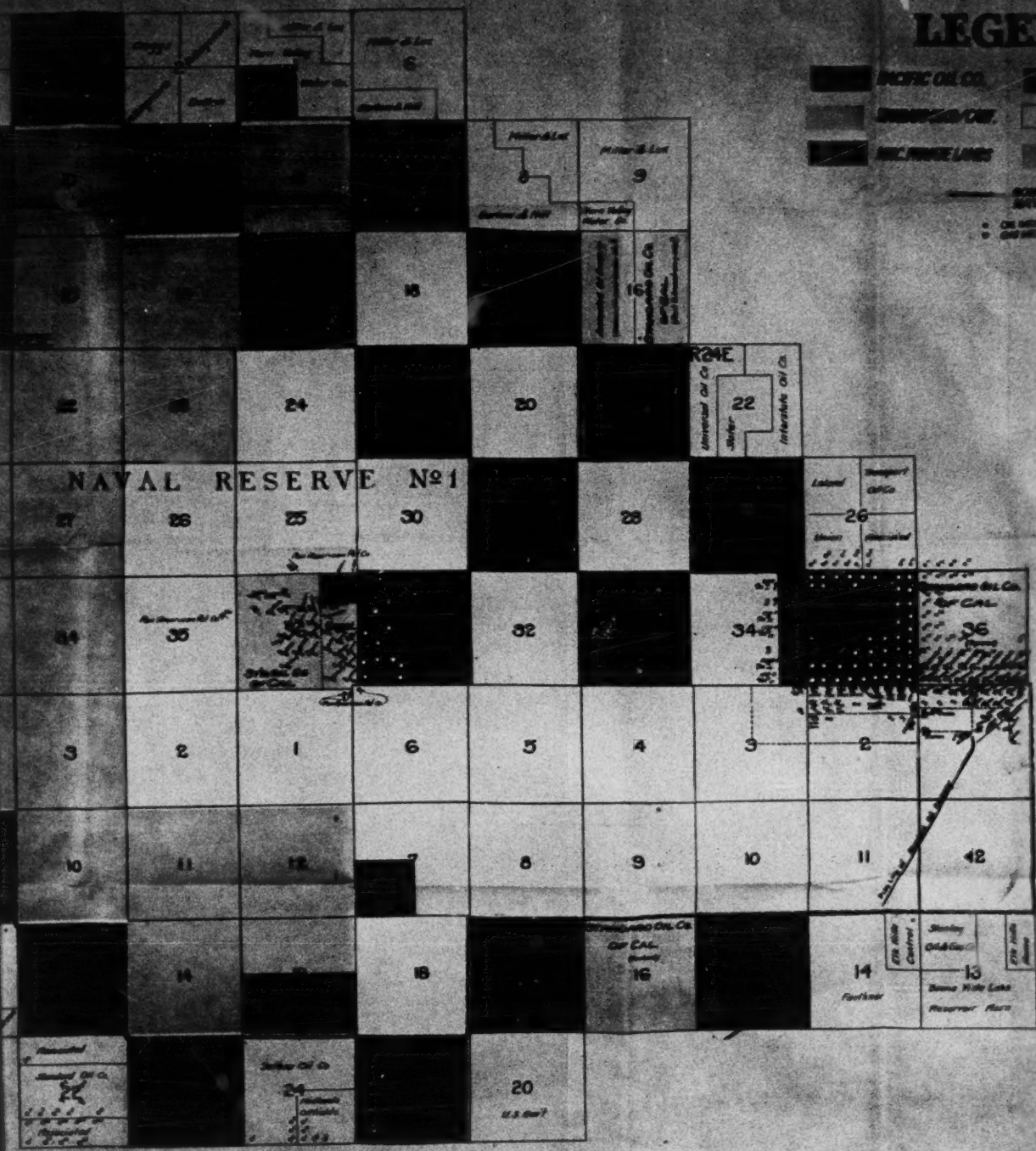


SCHEMATIC OF
NAVAL RESERVE

OIL WELLS
 GAS WELLS



NAVAL RESERVE No 1

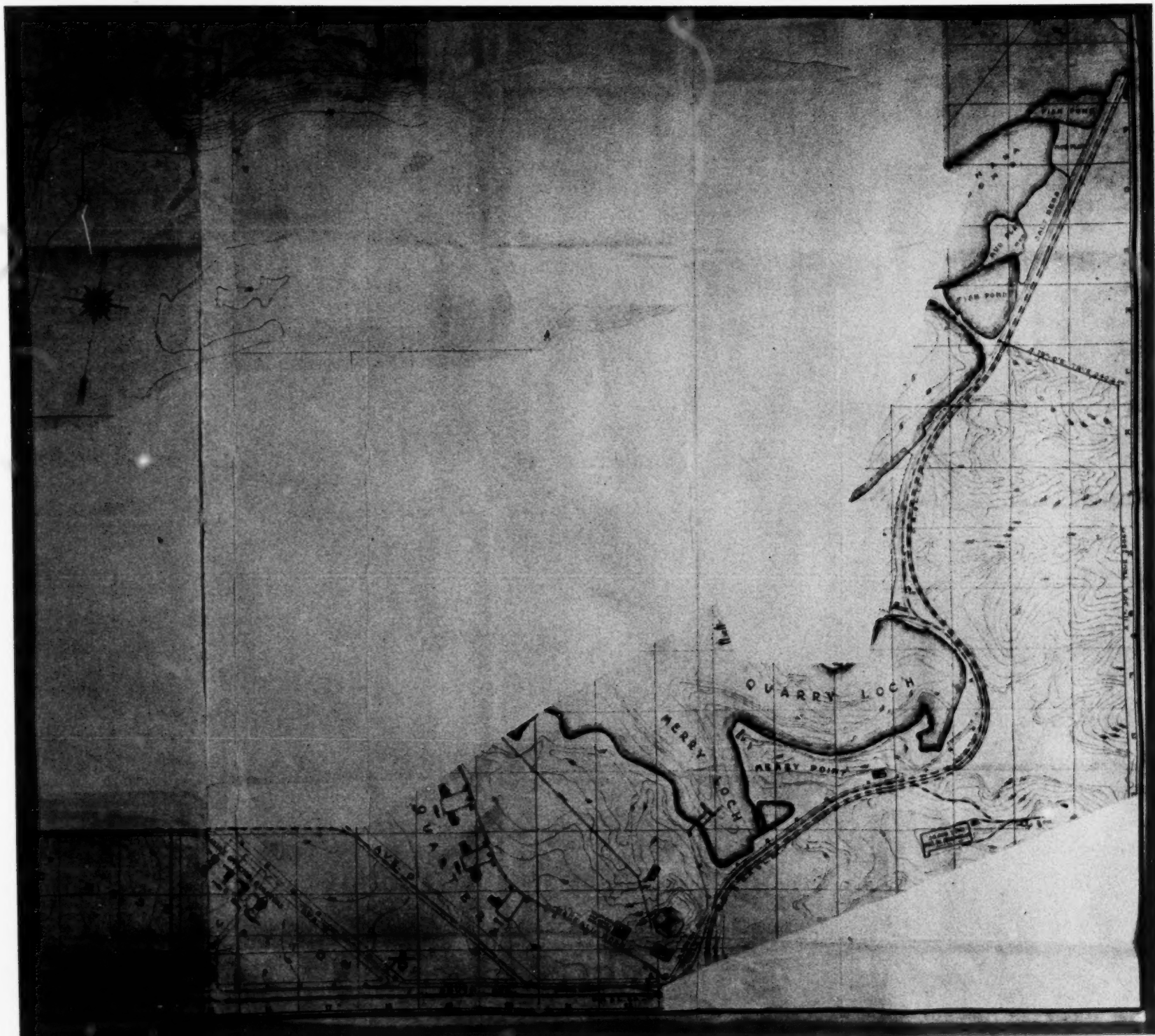


51

vs. United States of America.

1211

DEFENDANTS' EXHIBIT "F-4."





vs. United States of America.

1213

DEFENDANTS' EXHIBIT "E-5."

EXHIBIT "B"

PACIFIC OIL CO

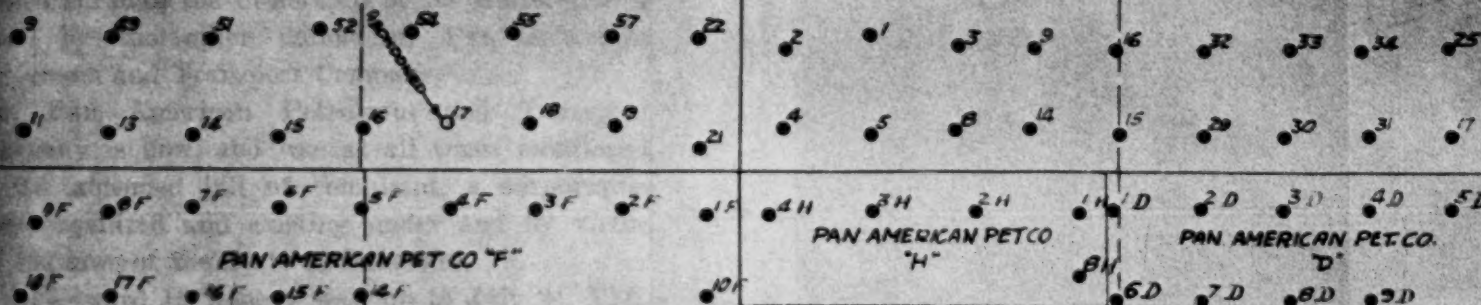
STANDARD OIL CO.
(TU PHAN)

STANDARD OIL CO.

35

35

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T305-R25E
T315-R25E

DATE	DESCRIPTION	MADE BY	DATE	CHECKED
ALTERATIONS				

SCALE 750' = 1"

Drawn	Field	Checked
SWR 9-16-24		
APPROVED	192	
FILE	DRAWING NO.	
PRINT ISSUED	REB 10 1924	

PREPARED AS OF MARCH 31 1924

(Name of Court and Title of Case.)

**PLAINTIFF'S REQUEST FOR FINDINGS OF
FACT.**

The plaintiff requests the learned Chancellor to make the following findings of fact:

1. Defendant Pan American Petroleum Company is, and at all times mentioned in the amended bill of complaint was, a corporation duly organized and existing under and by virtue of the laws of the State of California, and at all of said times was and now is wholly owned and absolutely controlled through the ownership of its entire capital stock by the other defendant, Pan American Petroleum and Transport Company.

2. Pan American Petroleum and Transport Company is now, and was at all times mentioned in the amended bill of complaint, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

3. Edward L. Doheny was, up to July 24, 1922, president of each of the defendant corporations. On or about July 24, 1922, he retired as president [766] of the Pan American Petroleum Company and became chairman of its board of directors. He continued as president of defendant Pan American Petroleum and Transport Company up to December 7, 1923, at which time he retired as such president and was duly elected chairman of the board of directors of said corporation.

4. At all times mentioned in the amended bill of complaint, said Edward L. Doheny, directly or indirectly, controlled over fifty per cent of the voting stock of defendant Pan American Petroleum and Transport Company.

5. Albert B. Fall, from March 5, 1921, until March 4, 1923, was the duly appointed, qualified, and acting Secretary of the Interior of the United States of America.

6. Edwin Denby, at all times mentioned in the amended bill of complaint, was the duly appointed, qualified, and acting Secretary of the Navy of the United States of America.

7. At and long prior to the filing of the bill of complaint herein, United States of America, the plaintiff, was and has ever since remained the owner in fee simple of the lands described in paragraph 5 of the amended bill of complaint; all of said lands were a part of the unappropriated public domain of the United States.

8. On, to wit, September 2, 1912, the President of the United States, pursuant to law, made a certain Executive order setting apart the lands described in paragraph 5 of the amended bill of complaint, wherein and whereby he ordered as touching said lands, as follows:

It is hereby ordered that all lands included in the following list and heretofore forming a part of petroleum reserve No. 2, California No. 1, withdrawn on July 2, 1910, from [767] settlement, location, sale, or entry and reserved for classification and in aid of legislation under the authority

of the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases (36 Stat. 847)," shall hereafter, subject to valid existing rights, constitute naval petroleum reserve No. 1, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by act of Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended in so far as it affects these lands.

Mount Diablo Meridian

T. 30 S., R. 22 E., sec. 24, all.

T. 30 S., R. 23 E., sec. 10, all; secs. 12 to 30, inclusive; secs. 32 to 36, inclusive.

T. 31 S., R. 23 E., secs. 1 to 4, inclusive; secs. 10 to 14, inclusive.

T. 30 S., R. 24 E., secs. 17 to 20, inclusive; secs. 28 to 34, inclusive.

T. 31 S., R. 24 E., secs. 1 to 12, inclusive; sec. 18, all.

WM. H. TAFT,
President.

September 2, 1912.

9. On May 31, 1921, the President of the United States made and issued a certain writing which is correctly copied as Exhibit "A" of the amended bill of complaint.

10. On July 8, 1921, said Albert B. Fall did communicate in writing to said Edward L. Doheny as follows:

There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under the direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau in his department, but only with himself, and such consultation will be confined strictly and entirely to matters of general policy. [768]

11. Said Edward L. Doheny, from and after July 8, 1921, understood and acted upon the belief that said Albert B. Fall had authority to make contracts and leases touching royalty oils from lands in the naval reserve and touching said lands themselves.

12. Between July 8, 1921, and October 25, 1921, said Albert B. Fall and said Edward L. Doheny held a personal conference or personal conferences with regard to the royalties reserved to the United States under a certain lease granted to Pan American Petroleum Company for a strip of land in the northeastern portion of Section 1, Township 31 South, Range 24 East, M. D. M., Kern County, California.

13. Between July 8, 1921, and October 25, 1921, said Albert B. Fall and said Edward L. Doheny held a conference or conferences respecting a proposed proposition to be made by and on behalf of

Pan American Petroleum and Transport Company, whereby said Pan American Petroleum and Transport Company should receive from the United States royalty oil accruing to the United States from leases on lands in naval reserves Nos. 1 and 2, California, and in consideration of such receipt should agree to erect certain storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil.

14. At such conference or conferences between said Albert B. Fall and said Edward L. Doheny had between July 8, 1921, and October 25, 1921, the matter of granting further leases in naval reserve No. 1 was discussed between said Fall and said Doheny. [769]

15. At and prior to November 30, 1921, there was pending in the Department of the Interior of the United States for action by the said Albert B. Fall, as Secretary of the Interior, a petition of Pan American Petroleum Company praying a reduction of the royalty of $55\frac{1}{2}$ per cent reserved to the United States in the lease of July 12, 1921, whereby the United States leased to said company certain territory in the northeastern portion of Section 1, Township 31 South, Range 24 East, in naval reserve No. 1.

16. At and prior to November 30, 1921, there was pending before the Department of the Interior of the United States, for action by the said Albert B. Fall as Secretary of the Interior, a proposition or proposal by Pan American Petroleum and Transport Company whereby, in consideration of the re-

ceipt of royalty oils by said company, and in consideration of the granting of further leases of lands in naval reserve No. 1 to said company, said company should agree to erect certain storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil.

17. At and prior to November 30, 1921, said Albert B. Fall and said Edward L. Doheny discussed a proposal that the said Edward L. Doheny should pay and deliver to the said Albert B. Fall the sum of \$100,000 lawful money of the United States for the personal use of said Albert B. Fall; and said Edward L. Doheny agreed if and when said Albert B. Fall should need said sum to pay the same to him.

18. On, to wit, November 30, 1921, said Edward L. Doheny, then being in New York City, New York, did at the request of said Albert B. Fall, [770] transmit to said Albert B. Fall in Washington the sum of \$100,000 lawful money of the United States.

19. Said Edward L. Doheny did not transmit said sum in the usual manner customary in business transactions as he could have done; but on the contrary transmitted the same in currency.

20. The said currency was obtained from Blair & Company, bankers, of New York City, by the use of the check of Edward L. Doheny, Jr., the son of said Edward L. Doheny.

21. The said currency was sent in a satchel by the hands of said Edward L. Doheny, Jr., from New York to Washington, where the said currency was

delivered to said Albert B. Fall. No entry of the withdrawal of said currency appears in the account of said Edward L. Doheny with Blair & Company.

22. No entry of said advance or of said transaction, nor of any personal transaction growing thereout between said Albert B. Fall and said Edward L. Doheny, has ever been made a matter of record or entry in the books of said Edward L. Doheny.

23. Said Albert B. Fall did, on November 30, 1921, hand to said Edward L. Doheny, Jr., who delivered the same to said Edward L. Doheny, a note payable on demand after date and bearing date Washington, D. C., November 30, 1921, in the sum of \$100,000, and payable to said Edward L. Doheny at New York City, or Los Angeles, California, value received with interest.

24. No sum, either on account of principal or interest, has been paid by the said Albert B. Fall to the said Edward L. Doheny on account of said note, or on account of said sum of \$100,000 so advanced or on account of interest thereon. [771]

25. Within a few weeks after the giving of said note the signature of Albert B. Fall thereon was torn from said note by said Edward L. Doheny, and said note remains so torn to this day.

26. The purpose of such tearing was so that said note should not be an enforceable obligation of said Albert B. Fall.

27. On, to wit, November 28, 1921, said Edward L. Doheny, acting for and on behalf of defendant Pan American Petroleum and Transport Company,

submitted to said Albert B. Fall a proposition in writing, a true copy whereof is as follows:

PAN AMERICAN PETROLEUM AND TRANSPORT CO.,

Office of the President,
New York, November 28, 1921.

The Honorable the Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary: Along the lines of your suggestion, I have made some inquiries regarding the cost of constructing tanks for the storage of one and one-half million barrels of fuel oil at Pearl Harbor. I find that the best price obtainable for these tanks, the Government to stand the cost of transporting the material from the ship's side to the tank site, and the cost of grading and otherwise preparing the tank site, is \$19,960 per tank, or \$0.363 per barrel of storage capacity.

The present price of crude oil in the field in California is \$1.13 per barrel. The present cost of fuel oil delivered at Pearl Harbor is \$1.90 per barrel.

The cost of 1,485,000 barrels of fuel oil delivered at Pearl Harbor at present rates would be \$2,821,500, which, added to the cost of constructing the 27 tanks necessary to store this amount of oil, which is \$538,920, makes a total of \$3,360,420.

Therefore, were we to construct the tanks and furnish the oil on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserve and to be

leased to us, it would require a return to us in royalty crude valued at \$3,360,420, or 2,973,823 barrels, figured at to-day's price. Of course, interest on the money invested should also be figured until final adjustment is made through the payment of royalty oil. [772]

I suppose you will turn this matter over to First Assistant Secretary Finney, who, with Rear Admiral Robison, may arrange the details of it during your absence, and as I also expect to be absent, I am confidentially furnishing Mr. Cotter with the information so that he can intelligently discuss the matter with Mr. Finney.

Cordially yours,

E. L. DOHENY.

28. On, to wit, November 29, 1921, said Albert B. Fall wrote, signed, and forwarded to Admiral J. K. Robison, Chief of the Bureau of Engineering of the United States Navy, a letter which is as follows:

My Dear Admiral: Mr. Cotter will wait upon you with data, etc., with relation to oil tanks and royalty oils in connection with Pearl Harbor demands.

I have asked him also to hand you, for your inspection, the original of a letter from Colonel Doheny addressed to myself, containing a *résumé* of the data.

Should you think best to accept this proposition then of course it would be necessary, in my judgment, to turn over to Colonel Doheny, if we can do so, leases upon further wells or area in the

naval reserve in which he is now drilling. If this is done it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American.

The gas pressure is lessening to such a degree that the output of the wells of the two latter companies, as well as of other companies drilling in this neighborhood, is decreasing and is very disappointing. The two companies named are pumping their wells and of course they are not making any money but will experience a loss in the payment of the fifty-five per cent royalty to the Government.

If you approve the proposition, will you kindly indicate to me such approval by simple endorsement upon Col. Doheny's letter to myself, signed by yourself. Your simple O. K. will be sufficient.

Very sincerely yours,

ALBERT B. FALL.

Rear Admiral JOHN K. ROBISON,
Engineer in Chief, Navy Department.

29. On, to wit, November 30, 1921, said Albert B. Fall was willing, ready, and desirous to enter into a contract with Pan American Petroleum and Transport Company along the lines outlined in said [773] letter of November 28, 1921, and said letter of November 29, 1921.

30. On or before December 1, 1921, said Albert B. Fall issued instructions to his subordinates in the Department of the Interior, that the petition of Pan American Petroleum Company for reduction of royalties under the lease of July 12, 1921, should

be refused, but that said Company should, as relief, be granted a lease at regulation Interior Department royalties in section 1, T. 30 S., R. 24 E., in naval reserve No. 1.

31. Said Albert B. Fall, from, to wit, January 27, 1922, to April 15, 1922, knew and understood that Pan American Petroleum and Transport Company would make a bid to construct storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil, in consideration of the delivery to it of royalty oil of the United States, and in consideration that it should be assured further leases in naval reserve No. 1, Kern County, California. Said Albert B. Fall from, to wit, January 27, 1922, to April 25, 1922, was informed that the bid to be made by Pan American Petroleum and Transport Company would, so far as construction of storage tankage facilities and the filling of the same with fuel oil, be a bid at cost, and he further knew that said bid would involve the granting or assuring to Pan American Petroleum and Transport Company of further oil and gas leases of lands lying within naval petroleum reserve No. 1 in California.

32. No other person or corporation, except certain officers and agents of the United States, and except those operating with Pan American Petroleum and Transport Company in the matter, was advised that Pan American Petroleum and [774] Transport Company would bid at cost for the construction and filling of said storage tankage facilities at Pearl Harbor, T. H.

33. No other person or corporation was informed by said Albert B. Fall, or by any person acting on behalf of the United States in the premises, that the United States would consider a bid conditioned upon the assurance to the bidder of the granting of further leases in naval petroleum reserve No. 1, California, or preferential right to leases therein if and when made.

34. Due to the interest of said Albert B. Fall in forwarding a contract with the Pan American Petroleum and Transport Company touching the construction and filling of storage tankage facilities at Pearl Harbor, T. H., and the granting of further leases to Pan American Petroleum and Transport Company in naval petroleum reserve No. 1, California, Pan American Petroleum and Transport Company and its engineering representative, J. G. White Engineering Corporation, were, beginning in December, 1921, and continuing until April 15, 1922, kept in close touch with the development of the plans for said construction and for the making of a contract touching the same, and had opportunities for conference and advice from the officers and employees of the United States which no other bidder was afforded.

35. The only oil companies with whose officers or representatives officers or employees of the United States conferred touching a proposed contract for delivery of royalty oils of the United States in consideration of the construction of storage tankage facilities at Pearl Harbor, T. H., and the filling of the same with fuel oil, were Pan

[775] American Petroleum and Transport Company, Standard Oil Company of California, General Petroleum Company, Associated Oil Company, and Union Oil Company of California.

36. Said Albert B. Fall knew prior to April 15, 1922, that counsel for General Petroleum Corporation considered the proposed contract illegal and that said company would not submit a bid.

37. No invitations for proposals for the Pearl Harbor project were sent to General Petroleum Corporation.

38. Said Albert B. Fall knew prior to April 15, 1922, that counsel for Standard Oil Company of California was of opinion that the proposed contract was illegal and had written an opinion to that effect, and that Standard Oil Company of California would not bid upon the construction of tankage facilities in consideration of delivery of Government royalty oils.

39. It was or could have been known to said Albert B. Fall prior to April 15, 1922, that Union Oil Company of California had not been asked to submit a bid and would not bid in response to the invitation for proposals issued by the Interior Department for bids for the construction of tankage facilities and the filling of the same with fuel oil at Pearl Harbor, T. H.

40. No invitations for proposals for the Pearl Harbor project were sent to Union Oil Company of California.

41. It was known to said Albert B. Fall prior to April 15, 1922, that Associated Oil Company

would not submit a bid for the construction of storage facilities at Pearl Harbor and the filling of the same with fuel oil except upon the condition [776] that authority should be obtained from Congress for the making of such a contract as was proposed.

42. Said Albert B. Fall, prior to April 15, 1922, knew that invitations had been furnished to two construction companies, but he was of the opinion, and so stated, that it was impossible for construction companies to make bids on the proposed work of construction at Pearl Harbor, T. H., because the same would have to be paid for by delivery of royalty oils belonging to the United States.

43. An invitation for proposals was issued calling for bids to be made to the Secretary of the Interior which bore date March 7, 1922. The proposals submitted thereunder were opened April 15, 1922. The only proposals received were as follows:

A proposal from Associated Oil Company which was conditioned upon congressional action approving the form of contract intended to be made.

A proposal from Associated Oil Company which furnished which did not cover the proposed construction work mentioned in the invitation, but applied only to the furnishing of fuel oil.

Two proposals from Pan American Petroleum and Transport Company, one called Proposal A, which was in accordance with the invitation, and another called Proposal B, which was not in accordance with the invitation.

44. Said proposal B named a smaller lump sum

in barrels of crude royalty oil than did Proposal A; agreed that if the contractor's actual cost of the doing of the work of construction were less than a stipulated sum mentioned in the proposal, any savings effected below said stipulated sum should be credited to the Government, and was conditioned upon the granting by the United States of a preferential right to the Pan American Petroleum and Transport Company to become the lessee in all leases which might thereafter be granted by the [777] United States for recovery of oil and gas in naval petroleum reserve No. 1, California.

45. No other bidder was invited to compete for a contract upon the terms mentioned in Proposal B of Pan American Petroleum and Transport Company, nor was any bidder invited to bid upon any terms involving the granting of preferential rights to leases by the United States.

46. No person or corporation was advised by the officers or employees of the United States that it was expected any bid would be received for the doing of the construction work at Pearl Harbor at cost.

47. Said Albert B. Fall was not in Washington when the proposals were opened and scheduled on April 15, 1922. He left Washington for Three Rivers, New Mexico, on April 13, 1922.

48. Before said Albert B. Fall left Washington on April 13, 1922, he gave instructions to his subordinates that no bid should be accepted and no contract should be awarded without his first being

informed and without his consent thereto being given.

49. On April 18, 1922, the Acting Secretary of the Interior, Edward C. Finney, communicated by telegraph with said Albert B. Fall, advising that certain officers and employees of the United States named in said telegram recommended the acceptance of Proposal B; on the same date said Albert B. Fall gave his consent by telegram to the acceptance of Proposal B.

50. On April 18, 1922, pursuant to the consent and direction of said Albert B. Fall, Edward C. Finney, then Acting Secretary of the Interior, as [778] such, purported to make an award to Pan American Petroleum and Transport Company by transmitting to said company a letter in the words following:

Department of the Interior, Washington,
April 18, 1922.

Pan American Petroleum & Transport Co.,
120 Broadway, New York City, N. Y.

Gentlemen: Your bid filed April 15, 1922, for the exchange of Government royalty oils from naval reserves Nos. 1 and 2, California, for fuel oil and storage for naval purposes at Pearl Harbor, Hawaii, has been examined in connection with other bids submitted, and your alternative bid B found to be the lowest and best bid received. Accordingly award is hereby made to you of said contract, per

your alternative bid B. Formal contract is being prepared for execution.

Respectfully,

E. C. FINNEY,

Acting Secretary.

51. Subsequent to the forwarding of the letter mentioned in the last preceding request, J. J. Cotter, vice president of Pan American Petroleum and Transport Company, averred that that company did not desire to proceed with the making of the contract pursuant to said letter unless the United States would agree that within twelve months from the date of the contract it would grant to the Pan American Petroleum and Transport Company a lease or leases on some portion of the lands lying within the boundaries of naval reserve No. 1.

52. On April 20, 1922, Arthur W. Ambrose, chief petroleum technologist of the Bureau of Mines of the Department of the Interior of the United States, was sent with all documents and papers relative to the same to Three Rivers, New Mexico, to consult with the said Albert B. Fall concerning [779] the same. It is not clear whether said Ambrose took with him a draft of the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, in order to show the same to the said Albert B. Fall. It is, however, true that he was instructed to consult the said Fall concerning same.

53. Pending said Ambrose's arrival at Three Rivers, New Mexico, for consultation with said Albert B. Fall, certain officers and employees of

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the United States were at work in drafting the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint.

54. On April 23, 1922, said Albert B. Fall, by telegram, advised Edward C. Finney, Acting Secretary of the Interior, that he should go ahead with the contract and should execute the same on behalf of the Department of the Interior.

55. Amongst other matters as to which said Ambrose was instructed to consult said Albert B. Fall on the arrival of said Ambrose at Three Rivers, New Mexico, on or about April 23, 1922, was the question whether said Edwin Denby, as Secretary of the Navy, should be made a party to the proposed agreement to be made with the Pan American Petroleum and Transport Company.

56. By telegram dated April 23, 1922, said Albert B. Fall consented and agreed that said Edwin Denby should be so made a party.

57. The question whether said Edwin Denby should not be made a party to the agreement and whether the Executive order of May 31, 1921, Exhibit "A" of the amended bill of complaint, had any legal force and effect, was originally raised [780] by J. J. Cotter, vice-president of and attorney for Pan American Petroleum and Transport Company.

58. Said Cotter absolutely refused to permit Pan American Petroleum and Transport Company to enter into said contract unless said Edwin Denby should be made a party to and sign said contract as Secretary of the Navy of the United States.

59. From the inception of negotiations with Pan American Petroleum and Transport Company touching a proposed contract for the erection of storage facilities and filling the same with fuel oil at Pearl Harbor, T. H., Albert B. Fall kept in touch with the matter and no matter of policy or action of importance was determined without his consent first had and obtained.

60. The condition inserted in Proposal B by Pan American Petroleum and Transport Company touching a preferential right to leases in naval petroleum reserve No. 1 was so inserted with the express purpose on the part of the officers and employees of said company that no other company should have an opportunity to obtain leases in said naval petroleum reserve, and so that said Pan American Petroleum and Transport Company should be able to eliminate competition for such leases as the United States might thereafter decide to make.

61. The guarantee of certain specific leases in the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, was not necessary, nor was it necessary to make the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint when the same was made, to prevent drainage. [781]

62. The purpose of the guarantee of certain leases in the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, was to assure the production of additional royalty oil to be used by the United States as consideration for the construction of storage tankage facilities at Pearl

Harbor, T. H., and the filling of the same with fuel oil.

63. The posted field price of crude oil in California declined rapidly after the making of the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint.

64. In the autumn of 1922 Pan American Petroleum and Transport Company, and said Edward L. Doheny, were in correspondence and consultation with said Albert B. Fall concerning a proposal that the Pan American Petroleum and Transport Company should at once become lessee of certain areas in naval petroleum reserve No. 1, and in consideration thereof should agree to do the things mentioned in said written proposition for the United States. The proposition of Pan American Petroleum and Transport Company to become lessee of certain area in naval petroleum reserve No. 1 and to give certain considerations to the United States in consideration of becoming such lessee, was by said Edward L. Doheny reduced to writing and delivered to said Albert B. Fall.

65. Said proposition so reduced to writing was delivered by said Albert B. Fall to certain other officers and employees of the United States with his favorable recommendation.

66. As a result of said proposition said Edward L. Doheny subsequently enlarged the same by a [782] proposition in writing bearing date November 6, 1922, made certain further suggestions with regard to the areas to be leased to Pan American Petroleum and Transport Company, and with re-

gard to the considerations which the Pan American Petroleum and Transport Company would give to the United States for such lease or leases.

67. As a result of said second proposition of said Edward L. Doheny negotiations were had between certain officers of Pan American Petroleum and Transport Company, or its nominee, Pan American Petroleum Company and certain officers and employees of the United States, concerning a proposed lease to be granted on lands in naval petroleum reserve No. 1, California.

68. Said Albert B. Fall and said Edward L. Doheny conferred together concerning a schedule of royalties to be inserted in the proposed lease to Pan American Petroleum and Transport Company, or its nominee, Pan American Petroleum Company, with the result that said Albert B. Fall and said Edward L. Doheny agreed upon a schedule of royalties which was the schedule of royalties recommended by said Albert B. Fall and which became the schedule of royalties in the lease to Pan American Petroleum Company, Exhibit "D" of the amended bill of complaint.

69. Said lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, was arranged by private negotiation and no competition of any kind was had in the making thereof. No other oil company was invited to submit a proposal for such lease, although at least one other oil company would have been interested in the matter. [783]

70. For some time prior to the making of the lease of December 11, 1922, Exhibit "D" of the

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amended bill of complaint, and down to October 25, 1922, said Albert B. Fall and other officers and employees of the United States who were in close touch with him in connection with the administration of the naval petroleum reserves, stated to persons making inquiry for leases in naval petroleum reserve No. 1 in effect that it was not the intention of the Department of the Interior or of the United States to make any leases or to drill in naval reserve No. 1 except for purely defensive purposes, and that there was no immediate leasing or drilling in contemplation.

71. The representations mentioned in the previous paragraph, at least so far as said Albert B. Fall was concerned, were false and untrue and known by him so to be.

72. In February, 1922, an agreement was made by the United States with Pacific Oil Company, which is still in force, whereby no drilling should be done by either party to the agreement, except on six months notice to the other party. This agreement covered the following described lands:

T. 30 S., R. 24 E., SW. $\frac{1}{2}$ Sec. 27, S. $\frac{1}{2}$ Sec. 28, S. $\frac{1}{2}$ Sec. 29, SE. $\frac{1}{2}$ Sec. 30, E. $\frac{1}{2}$ Sec. 31. All of Sections 32 and 33, W. $\frac{1}{2}$ Sec. 34.

T. 31 S., R. 24 E., NW. $\frac{1}{2}$ Sec. 3, N. $\frac{1}{2}$ Sec. 4, N. $\frac{1}{2}$ Sec. 5, NE. $\frac{1}{2}$ Sec. 6.

73. In October, 1922, an agreement was made whereby no drilling was to be done in section 31, T. 30 S., R. 24 E., and 36, T. 30 S., R. 23 E., in naval reserve No. 1. Said agreement is still in force.

74. There was no necessity, on account of

threatened drainage, to make the lease of December [784] 11, 1922, Exhibit "D" of the amended bill of complaint, at the time it was made.

75. At the time of making the agreement and lease of December 11, 1922, Exhibits "C" and "D" of the amended bill of complaint, the plans for the further construction work at Pearl Harbor had not been prepared. Said plans were not forwarded by the Navy Department until January 7, 1923.

76. Fuel oil is a supply used by the United States Navy; gasoline is a supply used by the United States Navy; Diesel oil is a supply used by the United States Navy; lubricating oil is a supply used by the United States Navy.

77. The project embodied in the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, was and is a project complete in itself, and constitutes a reserve fuel depot for the United States Navy.

78. The two projects embodied in the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, are concrete, definite, and complete projects in and of themselves. The one constitutes a fuel depot for reserve oils and the other constitutes a complete, separate, and independent gasoline fuel depot located on what is known as Ford Island, in the Pearl Harbor Naval Station, T. H.

79. The contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, is a contract for

the construction of a fuel depot at Pearl Harbor, T. H., and the filling of the same with fuel oil.

80. The contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, constitutes, *inter alia*, a contract for the erection of two fuel [785] depots for the United States Navy at Pearl Harbor, T. H., and the filling of the same with certain petroleum products.

81. The proper and duly authorized officials of the United States Navy, on February 25, 1920, made a request of the Naval Committee of the House of Representatives, for the insertion in the annual appropriation bill for the Navy for the fiscal year beginning July 1, 1920, and ending June 30, 1921, which became the act of June 4, 1920, of an appropriation of \$1,000,000 for the construction of storage for reserve fuel oil at Pearl Harbor, T. H. No such appropriation was made in said bill.

82. From 1913 to 1922, inclusive, appropriations by the Congress of the United States, except emergency appropriations during the war with Germany, were made in specific sums for specific projects, and not otherwise; in the case of deficiency appropriations made during the emergency of war, where the practice above mentioned was not followed, special explanation was made to Congress of the reasons for not following it when lump appropriations were made for fuel depots generally.

83. The payment of \$100,000 by said Edward L. Doheny to said Albert B. Fall was intended by the said Edward L. Doheny to influence the said Albert B. Fall in his official actions in connection with

leases and contracts touching the United States naval reserves and royalty oil accruing to the United States from said reserves to be made with Pan American Petroleum and Transport Company and its subsidiary, Pan American Petroleum Company. [786]

84. At the time when said Edward L. Doheny paid said sum of \$100,000 to said Albert B. Fall, said Edward L. Doheny knew and understood that such payment would influence said Albert B. Fall in his official conduct as Secretary of the Interior in connection with leases and contracts to be made to Pan American Petroleum and Transport Company and its subsidiary, Pan American Petroleum Company, in connection with United States Naval Petroleum Reserves in California.

85. At the time said Edward L. Doheny made said payment of \$100,000 to said Albert B. Fall, it was understood by said Edward L. Doheny and said Albert B. Fall that said Albert B. Fall need not repay the same or any part thereof to said Edward L. Doheny.

86. At the time said Edward L. Doheny made said payment of \$100,000 to said Albert B. Fall, said Edward L. Doheny expected that if said Albert B. Fall did not sell or turn over certain ranch land owned by said Albert B. Fall, or to be acquired by him in New Mexico, said Edward L. Doheny would cause Pan American Petroleum and Transport Company to employ said Albert B. Fall at a salary sufficiently large to enable said Albert B. Fall out

of one half thereof to pay off said amount in five or six years.

87. At the time said Edward L. Doheny made said payment of \$100,000 to said Albert B. Fall, said Edward L. Doheny knew that said Albert B. Fall expected to leave the Government's employ and to obtain employment with Pan American Petroleum and Transport Company, or Pan American Petroleum Company, or both, through the procurement and good offices of said Edward L. Doheny. [787]

88. Said Edward L. Doheny, at all times mentioned in the amended bill of complaint, purported to be and was in fact in effective control of the policies and actions of Pan American Petroleum and Transport Company and its subsidiary, Pan American Petroleum Company.

89. Subsequent to October 25, 1921, and prior to March 7, 1922, said Albert B. Fall and John K. Robison, personal representative of said Edwin Denby in naval reserve matters, agreed that the proposed contract for the construction of tankage facilities and filling the same should be kept secret.

90. The reason and purpose of said agreement for secrecy was in order that Congress and the public should not know what was being done, and was not military reasons.

91. Pursuant to said agreement the proposed contract was concealed and kept secret until after the award was made on April 18, 1922, to Pan American Petroleum and Transport Company.

92. Said Edward L. Doheny and said Albert B. Fall did act in co-operation and collusion with respect to the royalties being paid and to be paid on subsequent leases by Pan American Petroleum and Transport Company, and its subsidiary, Pan American Petroleum Company, and with regard to all other matters and things touching the proposed contract which was ultimately made April 25, 1922, between the United States, acting through Edwin Denby and Albert B. Fall, and Pan American Petroleum and Transport Company, and also with regard to the agreement and lease of December 11, 1922, Exhibits "C" and "D" of the amended bill of complaint. [788]

PLAINTIFF'S REQUESTS FOR CONCLUSIONS OF LAW.

The learned Chancellor is requested to make the following conclusions of law:

1. The payment of \$100,000 by Edward L. Doheny to Albert B. Fall, under the circumstances under which said payment was made in this case, was *contra bonos mores* and against public policy.

2. The question whether the directors and stockholders of Pan American Petroleum and Transport Company knew of said payment is immaterial.

3. The making of said payment constitutes a fraud upon the United States and renders voidable all contracts and transactions made between Pan American Petroleum and Transport Company, or its subsidiary, Pan American Petroleum Company, and the United States subsequent thereto.

4. Edward L. Doheny and Albert B. Fall did conspire and confederate for the making of certain contracts and agreements of great benefit and advantage to the Pan American Petroleum and Transport Company, and pursuant to said confederation and conspiracy there were made the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint; the alleged contract of April 25, 1922, Exhibit "E" of the amended bill of complaint; the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint; the agreement of December 11, 1922, Exhibit "C" of the amended bill of complaint; and the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint.

5. The contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, was not let upon competitive bidding. [789]

6. The contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint, the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, and the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, are voidable at the option of the United States and should be delivered up to be cancelled.

7. The contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, are null, void, and of none effect, and the same should be surrendered up by defendant

Pan American Petroleum and Transport Company to plaintiff for cancellation.

8. The lease of June 5, 1922, Exhibit "F" of the amended bill of complaint, was made without authority of law, was part of the consideration of an illegal contract, to wit, the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and the same should be delivered up by defendant Pan American Petroleum and Transport Company to be cancelled.

9. The lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, constituted part of the consideration given by the United States for the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, said contract being wholly void and illegal, said lease is likewise void and illegal and should be delivered up for cancellation by the defendant Pan American Petroleum Company.

10. The defendants Pan American Petroleum and Transport Company and Pan American Petroleum [790] Company should cease to trespass upon the lands of the United States and should forthwith surrender possession of the lands mentioned in the bill of complaint, and all of them, to the United States.

11. The contracts and leases mentioned in the bill of complaint were and are wholly unauthorized by law or any statute and should be delivered up to plaintiff for cancellation.

12. An account should be stated and taken between the United States and Pan American Pe-

troleum and Transport Company, and its subsidiary, Pan American Petroleum Company, whereby said defendants should account to the plaintiff for all oil delivered by the United States to Pan American Petroleum and Transport Company under the contracts of April 25, 1922, Exhibit "B" of the amended bill of complaint, and December 11, 1922, Exhibit "C" of the amended bill of complaint, for all oil recovered by either of said defendants under the leases of June 5, 1922, Exhibit "F" of the amended bill of complaint, and December 11, 1922, Exhibit "D" of the amended bill of complaint, and the sum or sums found due upon such accounting should be paid by the defendants, or either of them, to the plaintiff.

13. That the costs of this proceeding should be paid by the defendant Pan American Petroleum and Transport Company. [791]

(Name of Court and Title of Case.)

**DEFENDANTS' REQUESTS FOR FINDINGS
OF FACT AND CONCLUSIONS OF LAW.**

**DEFENDANTS' REQUESTS FOR FINDINGS
OF FACT.**

Defendants respectfully request the Court to make the following findings of fact:

1. That the Executive Order, dated May 31, 1921, which was signed by Warren G. Harding, President of the United States, was not obtained, or caused to be issued by Albert B. Fall.

2. That the said Albert B. Fall did not make any false, fraudulent or untrue representations of

fact to the said Warren G. Harding for the purpose of inducing the making of or in any way in connection with the Executive Order of May 31, 1921.

3. That on or about November 30, 1921, Edward L. Doheny loaned to Albert B. Fall the sum of One Hundred Thousand Dollars, which [792] said loan was evidenced by the promissory note of the said Albert B. Fall to the order of the said Edward L. Doheny, bearing said date, for the said sum, with interest, and payable on demand.

4. That the said loan was a personal transaction between the said Edward L. Doheny and Albert B. Fall, and that the same was not made either in consideration of, in contemplation of, or in any way connected with any of the instruments, of which copies are annexed to the amended complaint herein.

5. That the said Edward L. Doheny and the said Albert B. Fall did not combine, confederate, collude or conspire at any time to defraud the United States of America, by bringing about the execution and delivery of the instruments, of which copies are annexed to said amended bill of complaint or any of them.

6. That the contract, dated April 25th, 1922, being Exhibit "B" annexed to said amended bill of complaint, and the letter of the same date, being Exhibit "E" annexed thereto, and the lease dated June 5th, 1922, being Exhibit "F" annexed to said amended bill of complaint, and the contract and lease dated December 11th, 1922, being Ex-

hibits "C" and "D" annexed to said amended bill of complaint, and each of them, were thus executed and delivered by direction of and with the approval of Edwin Denby, Secretary of the Navy of the United States.

7. That the said Edwin Denby, in executing and delivering, and causing to be executed and delivered, each and every of the instruments, of which copies are annexed to said amended bill of complaint, did so of his own free will, volition and discretion, acting in good faith as Secretary of the Navy, as aforesaid.

8. That the said Albert B. Fall did not procure, or cause or induce the said Edwin Denby, as Secretary of the Navy, as aforesaid, to execute or deliver any of the said instruments of which copies are annexed to the said amended bill of complaint. [793]

9. That the execution and delivery by Edwin Denby, as Secretary of the Navy of the United States of America, of each and every of the said instruments of which copies are annexed to the said amended bill of complaint, was not procured or influenced, directly or indirectly, or intended to be procured or influenced, by the loan made on November 30, 1921, by Edward L. Doheny to Albert B. Fall.

10. That the action of Edward C. Finney, Assistant Secretary of the Interior, in signing the contract and letter, dated April 25, 1922, being Exhibits "B" and "E" annexed to the amended bill of complaint, was not procured or influenced

or intended to be procured or influenced by the loan made to Albert B. Fall by Edward L. Doheny on or about November 30, 1921.

11. That none of the said instruments of which copies are annexed to said amended bill of complaint, were, or are, detrimental to the interests of the United States of America.

12. That each and every of the said instruments, of which copies are annexed to the said amended bill of complaint, was, and is, fair, reasonable, and advantageous to the interests of the United States of America.

13. That defendants herein, and each of them, had, prior to the commencement of this action, duly and fully performed each and every obligation upon them, or either of them imposed by all of the said instruments, of which copies are annexed to said amended bill of complaint.

That the said defendants, and each of them, have been, and are, ready, able and willing to perform each and every of the obligations upon them imposed by the said instruments and each of them, except as restrained therefrom by the temporary injunction issued herein by this Court. [794]

14. That the defendant, Pan-American Petroleum & Transport Company, had, prior to the commencement of this action, expended, in good faith, in the performance of the contracts dated April 25th, 1922, and December 11th, 1922, large sums of money belonging to it.

That subsequent to the commencement of this action, the said defendant has expended additional

sums of money in the further performance of the said contracts.

That all of the said sums, thus expended, have been thus expended upon the property of the United States of America and under the supervision and control of the duly appointed officers of the United States of America.

That each and every of the said expenditures have been of value to the United States of America, and have enriched the United States of America; and that the United States of America has received, by reason of the said advances and expenditures by the said defendant, actual value of not less than \$1.10 for each \$1.00 thus expended by the said defendant.

15. That the defendant, Pan-American Petroleum Company, had, prior to the commencement of this action, expended large sums of money in the exploration, exploitation and development of the lands situated in Naval Reserve No. 1, and included in the leases dated June 5th, 1922, and December 11, 1922, copies of which said leases are attached to the amended bill of complaint and are marked Exhibits "F" and "D" respectively.

That all of the said advances and expenditures have been made in good faith, under advice of counsel and pursuant to the terms of the said leases, and are of value to plaintiff herein.

16. That all of the acts of Albert B. Fall and of all employees of the Department of the Interior in connection with any of the instruments of which copies are annexed to the amended bill of

complaint, were performed at the request of the Secretary of the Navy of the United States, and for the purpose of aiding in carrying out the wishes and decisions of the said Secretary of the Navy in the discharge of his duties. [795]

DEFENDANTS' REQUEST FOR CONCLUSIONS OF LAW.

1. That each and every of the instruments, of which copies are annexed to the amended bill of complaint herein, is legal, valid and binding upon the parties thereto.

2. That none of the said instruments is tainted by fraud.

3. That none of the said instruments was executed pursuant to any conspiracy between Albert B. Fall and Edward L. Doheny.

4. That the execution of none of the said instruments was procured by bribery.

5. That all of the said instruments were executed in all respects, in accordance with the laws of the United States of America.

6. That the Secretary of the Navy, in executing, approving and delivering each and every of the said instruments on behalf of the United States of America, acted by virtue of, and within and pursuant to the power and discretion lawfully vested in him by the Congressional Enactment passed June 4th, 1920.

7. That a decree should be entered in all respects dismissing the amended bill of complaint herein vacating the injunction and receivership order,

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dated March 17, 1924, heretofore made herein, and directing that the receivers appointed therein be discharged and directed to account for and pay to the defendants all sums of money which [796] may have come into their hands in the discharge of their duties, less their lawful reasonable costs and expenses. [797]

(Name of Court and Title of Case.)

MEMORANDUM OPINION.

Filed May 28, 1925. Chas. N. Williams, Clerk.
By R. S. Zimmerman, Deputy.

This is a suit in equity wherein the United States of America seeks to have declared null, void, and of no effect two contracts dated April 25, 1922, and December 11, 1922, respectively, and two oil and gas leases to lands in the Naval Petroleum Reserves in California dated June 5, 1922, and December 11, 1922, respectively. The prayer of the bill is that these agreements and leases be cancelled, for an accounting, and for general relief. The relief is sought upon two grounds: First, fraud in the making of the contracts and leases; and second, lack of legal authority for their making.

The case has received the careful consideration that its importance demands, but existing circumstances due to pressure and volume of work in the court do not admit of the preparation of a detailed opinion upon every issue. The formal decision upon all issues consists of the Findings of Fact

and Conclusions of Law filed herewith. I feel impelled however to amplify such decision by this statement. [798]

I will first consider the charge of fraud and official misconduct in the making of the contracts and leases in suit, and secondly, whether the agreements were made pursuant to any legal authorization. The first involves mixed questions of law and fact while the latter is solely a legal question.

The contracts and leases in suit may be epitomized as follows:

The agreement of April 25, 1922, is between the Pan American Petroleum and Transport Company, a corporation, called the "contractor," and the United States of America, by the Acting Secretary of the Interior and the Secretary of the Navy, thereof, denominated the "Government."

It recites: "that by virtue of authority contained in and the policy expressed by applicable Acts of Congress and in accordance with 'Proposal B' of the contractor, dated April 14, 1922, the parties hereto have mutually covenanted and agreed with each other as follows":

ARTICLE I. The contractor, for the consideration mentioned in the contract, and under the penalty of a bond of \$250,000, agrees to faithfully and fully furnish 1,500,000 barrels of fuel oil and storage facilities for said fuel oil which the contractor also agrees to construct at Pearl Harbor Territory of Hawaii, in accordance with "Proposal B" and plans and specifications to be furnished by the Government.

ARTICLE II. Declares the intention of the parties is to effect an exchange of crude oil unsuitable for Navy use for fuel oil, the crude oil being produced from Naval Petroleum Reserves Nos. 1 and 2, in California, and being property of the Government, and the fuel oil to be delivered by the contractor at the Naval Station at Pearl Harbor, Territory of Hawaii.

ARTICLE III. The contractor covenants to furnish the 1,500,000 barrels of fuel oil and to deliver such oil into storage facilities to be constructed and erected by the contractor for a lump sum of 5,878,905 barrels of crude oil from Naval Petroleum Reserves Nos. 1 and 2 "of from 14 to 17.9 degrees (Baume) gravity, or crude oil in such other quantity and quality as shall be of equal value, which lump sum is termed the 'proposal sum.'" Article Three further provides: "It is hereby mutually understood and agreed that said 'proposal sum' is based upon the November-December, 1921, published field price of [799] California crude oil of from 14 to 17.9 degrees (Baume) gravity (\$1.10 per barrel), which for the purposes of this agreement shall be termed the 'reference price of basic crude oil,' and upon the November-December, 1921, market price of fuel oil at Bay Point, California (\$1.50 per barrel), which for the purposes of this agreement shall be termed the 'reference price of fuel oil.'" Then follows a clause that deals with this change of gravity of oils in which computations and allowances are made under the contract dependent upon the variations

in the market prices of crude and fuel oil during the life of the contract and provision is made for the acceptance of "basic crude oil" of other gravity which is termed "particular crude oil." It is provided that if delivery of "particular crude oil" is made under the contract certain debits and credits will be extended at the ratio which the "published field price" of such "particular crude" on the date of delivery *bears* to the "reference price of basic crude." It is further agreed that any difference in debits and credits under the contract shall bear interest at the rate of 5% per annum the interest to be allowed in barrels of basic crude oil.

ARTICLE IV. The Government agrees to deliver to the contractor at the place of production each month "all the royalty oil that may be furnished by its lessees in reserves Nos. 1 and 2, until all claims of the contractor under the contract are satisfied."

ARTICLE V. Vests the Secretary of the Interior with exclusive discretion to grant additional leases on any lands he may designate in reserve No. 1 so as to maintain total deliveries of royalty oil under the contract at the approximate rate of 500,000 barrels per annum.

ARTICLE VI. Requires the Government to deliver to the contractor on account of the "proposel sum" all royalty oil from reserves Nos. 1 and 2 which has been accumulated and was in storage at the time the contract was made.

ARTICLE VII. Requires the contractor to take the crude oil at the wells and bear every expense

incident to its movement, and further requires the contractor to deliver the fuel oil in storage at Pearl Harbor, T. H., and to pay for the transportation of the fuel oil to storage and permits the contractor to supply the fuel oil in storage in any amount it may elect providing that the [800] required contract amount be entirely furnished and delivered in storage within the time that the Government has furnished sufficient royalty oil to pay for the contracted fuel oil and storage facilities.

ARTICLE VIII. Specifies how and where the fuel oil is to be gauged.

ARTICLE IX. Concerns the payment of demurrage in the event that the contractor's tankers are delayed in discharging fuel oil at Pearl Harbor, the calculation of demurrage being made in barrels of oil and added to the "proposal sum."

ARTICLE X. Relates to increasing or diminishing the "proposal sum" to meet the contingency of more or less or different concrete piles being required to provide the storage facilities at Pearl Harbor than are shown by the drawings and specifications.

ARTICLE XI. Confers the preferential right on the contractor and covenants that;

"if during the life of this contract future leases shall be granted"—within a certain portion of reserve No. 1—"the contractor shall first be called upon by the Secretary of the Interior to meet such drilling conditions and to pay such royalties as the Secretary may deem just and proper, and in the event of his acceptance of such conditions and of his agreement to pay

such royalties, the contractor shall be granted by the Government a preferential lease on such tracts as the Secretary of the Interior may decide to lease. In the event of the failure of the contractor to agree to the conditions and royalties as proposed by the Secretary of the Interior, then said lease or leases may be offered for competitive bidding, but the contractor shall have a right to submit a bid on equal terms with others engaged in said bidding."

ARTICLE XII. Provides for the giving to the Government of any saving in the cost of the construction of the storage facilities should said cost be less than 3,197,086 barrels of "basic crude oil" at "reference price" thereof, such saving to be determined by agreement between the Secretary of the Interior and the contractor and to be expressed by crediting such saving in barrels of "basic crude oil" on account of the "proposal sum."

The lease of June 5, 1922, was incidental to and in pursuance of the April 25, 1922, contract. It was granted at the request of the defendants and to enable the contractor to more speedily perform the said contract. It was given without competitive bidding and solely to effectuate the preferential right of Article XI of the April 25th contract. The parties were the United States of [801] America, acting through the Secretary of the Interior, and the Pan American Petroleum and Transport Company, a corporation. It recites, *inter alia*, that it is made pursuant to authority of an Act of Congress approved June 4, 1920 (41 Stat. 812), making

appropriations for naval service and other purposes. It granted the exclusive right to drill for, extract, remove, and dispose of all oil and gas deposits in the Northeast quarter (NE.1/4) of Section Three (3), Township Thirty-one (31) South, Range Twenty-four (24) East, of the Mount Diablo Meridian, California, for a period of twenty years with a certain preferential right of ten years additional. Certain drilling requirements are stated, and the royalties to be paid the Government under the lease range from twelve and one-half per cent (12½%) for twenty (20) barrels or less per day to forty-five per cent (45%) for four hundred (400) barrels or more per day for oil produced of thirty (30) degrees or over (Baume) and from twelve and one-half per cent (12½%) to thirty-five per cent (35%) for oil of less than thirty (30) degrees (Baume). The lease also provides for payment of certain royalties for gas and casing-head gasoline produced from wells under the lease. There are other provisions which are of no particular consequence in the present inquiry.

The contract of December 11, 1922, was made between the same parties as the April 25, 1922, agreement, but was signed on behalf of the Government by Albert B. Fall, Secretary of the Interior, in person. Its preamble recites the making of the contract of April 25, 1922, and the purposes and intent thereof, i. e., to effect an exchange of royalty crude oil from naval reserves for fuel oil in storage at Pearl Harbor, T. H., including tanks and incidental facilities, and that,

"It is now desired to fill said tanks as promptly as they are individually completed and also to procure for the Navy additional amounts of fuel oil and other petroleum products in storage at Pearl Harbor, T. H., and elsewhere, and the Secretary of the Navy in his letter of November 29, 1922—has requested the Secretary of the Interior as administrator of the naval petroleum reserves to arrange for such additional fuel oil and other petroleum products in storage through exchange therefor of additional royalty crude oil belonging to the Government in said California naval reserves, the probable cost of the additional products and storage immediately planned for being estimated at fifteen million dollars, more or less." [802]

It states the willingness of the contractor to do the work and furnish the oil, and then continues; "and whereas the furnishing of such additional amounts of fuel oil and other products in storage on the basis of exchange for the Government royalty crude oils cannot be accomplished from the present leases in the California naval reserves."

Mention is then made of the preferential right of the Pan American Petroleum and Transport Company to leases in naval reserve No. 1, as provided in the April 25, 1922, contract, the agreement reciting that the contractor

"is planning to provide refinery facilities at Los Angeles, California, for 10,000 barrels per

day, to be increased to 20,000 per day as soon as the situation justifies, together with the pipe lines connecting the leases in the field and the refinery and docks, and to erect storage to the amount of 2,000,000 barrels or more."

Then follows:

ARTICLE I. Providing for a bond of \$250,000 to insure compliance with the agreement, specifying E. L. Doheny as Guarantor on said bond. Said article of the agreement continues in paragraphs substantially as follows:

1. Makes provision for the contractor to furnish the fuel oil required under the April 25, 1922, contract, and to fill the storage tanks called for by said earlier contract when and as directed by the Secretary of the Interior.

2. Provides for the construction at Pearl Harbor, T. H., of additional storage facilities up to 2,700,000 barrels at cost and without profit to contractor.

3. Provides for the furnishing of fuel oil to fill the new construction and for charging the Government for such fuel oil delivered at Pearl Harbor, T. H., at the Bay Point, California, market price plus the cost of transportation by tankers to the place of storage.

4. Provides for the furnishing of other petroleum products than fuel oil and for filling the facilities to be constructed at Pearl Harbor, T. H., for such products under this contract at the Contractor's current sales price. In no case, however, is the cost to the Government for such products to

exceed the then current prices under Navy contracts for similar products.

5. Provides for furnishing without charge during the life of this contract storage for 1,000,000 barrels of fuel oil at Los Angeles, California, and for the filling of such storage with fuel oil to be exchanged for crude oil and [803] placing the same in custody of the Government, the said storage to be filled with fuel oil for the Navy as soon as the Government royalty oil from the California naval reserves shall have paid for all work done and crude oil products furnished at Pearl Harbor, T. H. Contractor also agrees to bunker Government ships from said 1,000,000 barrels of fuel oil at cost, and further, to carry during the life of this contract all royalty oils derived from leases in naval petroleum reserves in California to the refinery or tidewater at Los Angeles, California, free from any pipe-line charge.

6. Contractor further agrees for a period of fifteen years from the date of this contract and subject to the Navy demands to maintain 3,000,000 barrels of contrartor's C Grade fuel oil in certain storage depots of contractor on the Atlantic Coast, and provides further that any part of said fuel oil will be allocated to the Navy on thirty days' written notice and held for not more than six months in storage for the Navy at one cent per barrel per month storage charges until and unless such oil is purchased or released by the Navy, such allocation, however, shall not be maintained more than six months, and provides further,

“that if and when such oil is purchased by the Navy, contractor shall be paid therefor at market prices from current available Navy funds, and no charge shall be made against the Government under this section except for and on account of oil so set aside.”

7. Contractor agrees to furnish at such points as the Government shall designate a reasonable amount of crude oil products and storage facilities therefor similar to those agreed by this contract to be furnished at Pearl Harbor, T. H., when the royalty oils delivered by the Government to the contractor shall have been sufficient to pay for the Pearl Harbor project pursuant to the contract of April 25, 1922, and also for the additional work and crude oil products in this contract agreed to be furnished.

8. Gives the Navy the privilege of purchasing at 10% less than market price at tidewater any additional available fuel oil produced from Government lands in California Naval reserves which it might require above the amount which it is entitled to in exchange for its royalties, and provides further,

“said market price to be determined from time to time in such manner as may hereafter be agreed upon by the parties hereto, payment therefor to be made from current available Navy funds.” [804]

9. Agrees to sell to the Navy certain manufactured petroleum products from the California re-

finery on the same terms as those specified in subdivision 8 hereof.

ARTICLE II. Recites,

“for the considerations herein mentioned and contained, to wit, the furnishing of oils in storage and facilities and opinions as specified above, the Government agrees”:

A. To sell and deliver all its royalty oil from Numbers 1 and 2 reserves, subject to its obligation to deliver enough thereof to pay out the contract of April 25, 1922,

“until the Government’s obligations under this instant contract are discharged, and in any event for a period of 15 years from the date of the expiration of said contract of April 25, 1922, the Government to be given credit by contractor for such crude oil delivered by the Government at the published field price thereof on date of delivery and for such gas and casing-head gasoline at the prices and under the conditions fixed in the various leases, any surplus of Government credits thus accruing are to be satisfied by delivery of fuel oil or other petroleum products, by construction of additional storage facilities, or to be payable in cash, as the Government may at that time elect.”

B. To lease, and does lease, pursuant to the formal written lease dated December 11, 1922, to the Pan American Petroleum Company, a corporation, lands in naval petroleum reserve No. 1 described in the accompanying lease of said date and consisting of approximately 32,000 acres.

ARTICLE III. Provides for the gauging of the oils, and further, that any difference in debits and credits between the parties on account of crude oil received by the contractor on the one hand and expenditures made by contractor for storage facilities and crude oil products delivered by him on the other shall bear interest at the rate of five per cent per annum, determined on monthly balances, and also provides that the interest provisions contained in the contract of April 25, 1922, shall cover fuel oil as well as construction.

The lease of December 11, 1922, is practically a lease to exhaustion of production of oil and gas on all of the then unleased portions of naval reserve No. 1, the term of said lease being expressed as,

“for a period of 20 years from the date hereof and so long thereafter as oil or gas is produced in paying quantities from said lands,” [805] at sliding scales of royalties ranging from 12½% to 35% for oil of 30 degrees Baume or over, to from 12½% to 30% for oil of less than 30 degrees Baume, the royalties increasing with the amount of oil produced per well.

This lease gives the Pan American Petroleum Company the unrestricted right to drill and develop except in the land within naval reserve No. 1 West of the range line dividing Range 24 East and Range 23 East, M.D.M., but includes the right to drill and develop immediately the following sections West of said range line, to-wit, Sections 24, 25, 26, and 35 in Township 20 South, Range 23 East, M. D. M.

It recognizes a certain agreement between the Secretary of the Interior and the Pacific Oil Company restricting drilling upon certain portions of the leased area, but provides that upon request of the Pan American Petroleum Company the Secretary of the Interior will give to the Pacific Oil Company the six months' notice provided for in said agreement and provides that upon the expiration of such six months' notice the Pan American Petroleum Company shall have the same rights with respect to drilling, etc., upon said lands as upon all other lands covered by the lease lying East of the range line dividing ranges 22 and 23, as aforesaid.

The amended bill of complaint avers material matters that are either admitted by the parties to this suit or have been so thoroughly proven by the evidence that there can be no question concerning them. Among these are the following:

That from March 5, 1921, until March 4, 1923, Albert B. Fall was the duly appointed, acting, and qualified Secretary of the Interior of the United States of America.

That during all times material to this controversy Edwin Denby was the duly appointed, qualified and acting Secretary of the Navy of the United States of America.

That during all times concerned in this controversy and during all of the negotiations between officers of the Government and the defendant corporations Edward L. Doheny was the dominant and managing executive officer of the defendant corporations and during such times was either the

There is no evidence in the case that Mr. Doheny or the defendant companies had anything to do with the making or procuring of the Executive Order.

No effort was made by the plaintiff to establish the charge of false representations by Secretary Fall to the President relative to the promulgation of said Executive Order by direct evidence but it is contended that the circumstances of the situation sustain the charge. Mr. Fall was not called as a witness in this case by either party to the action. Mr. Doheny was called by the plaintiff but when interrogated by counsel for plaintiff asserted and claimed his constitutional right and refused to testify because of the pendency of an indictment against him in the District of Columbia involving matters material to this case, and, counsel for plaintiff having conceded that such indictment was pending and undetermined, this court thereupon recognized Mr. Doheny's constitutional right to remain silent and he did not testify further as a witness in this case. The only oral testimony concerning the obtaining of the Executive Order from President Harding was produced through a statement from Theodore Roosevelt, who during Secretary Denby's administration was Assistant Secretary of the Navy, and whose testimony will be noted later.

The rule of law as to the degree of proof required to establish false representations or pretenses, whether by direct or circumstantial evidence, is that it must be established by clear and convincing proof.

The original text of the Executive Order was prepared in the Interior Department. As early as the first part of May, 1921, and probably some time in the preceding month Secretary Fall had spoken to Assistant Secretary of the Interior Finney of a plan he had in mind by which the Interior Department would undertake to administer some of the lands in the naval oil reserves and at such time had asked Finney to give him a brief statement as to the applicable law. Mr. Finney prepared such a statement and expressed the opinion therein that under Section 18 of the Oil Leasing Act of February 25, 1920 (41 Stat. 437), and [808] the Act of June 4, 1920 (41 Stat. 812),

“the President may commit to the Secretary of the Interior the matter of authorizing additional wells or leases under Section 18 of the Leasing Act and the Secretary of the Navy may, under authority of the naval appropriation act cited (Act of June 4, 1920), request the Secretary of the Interior to handle for the Navy the conservation, development, and operation of other lands in naval reserves. The royalties from existing leases and such other royalties as may be derived from future leases in naval reserves may be turned over to the Navy Department directly or may be exchanged by the Secretary of the Interior, to the end that the Navy may have its equivalent in fuel oil.”

After submitting this statement to Secretary Fall there was prepared in the Interior Department,

probably by Mr. Finney, a letter which was signed by Secretary Fall and sent to the Secretary of the Navy, as follows:

Personal. "Department of the Interior,
Washington, May 11, 1921.

The Honorable,

The Secretary of the Navy.

Dear Mr. Secretary:

Referring to our conversation yesterday, and to your suggestion to the President that the Secretary of the Interior be placed in charge of administration of the laws relating to naval reserves, I am submitting herewith for your consideration a brief memorandum stating the facts and law with respect to naval reserves, a tentative form of letter for your signature if it meets with your approval, and a form of Executive Order for the President's signature, if it meets your suggestions of yesterday. Please consider the same and give me any criticisms or suggestions which may occur to you. If they meet with your approval, and no changes occur to you, kindly return them, with your approval, in order that the matter may be taken up with the President.

Respectfully,
(Signed) ALBERT B. FALL,
Secretary.

Inclosure 19756.

(Initials EOF.)"

With this letter there was enclosed, (1) the draft of a proposed letter from the Secretary of the Navy to the President, as follows:

“My Dear Mr. President:

The Act of February 25, 1920 (41 Stat. 437), authorizes the Secretary of the Interior to lease producing wells in naval petroleum reserves, and authorizes the President to permit the drilling of additional wells or to lease the remainder or any part of any claim in such reserves, with preference right to the claimant or his successor. A clause in the appropriation act for the year ending June 30, 1921 (41 Stat. 812), authorized the Secretary of the Navy to take possession of unappropriated lands within naval reserves, and to conserve, develop, use and operate the same ‘directly or by contract, lease, or otherwise.’ [809]

To avoid conflict, delay, and duplication, it occurs to me that the matter may be best administered through one agency, and I have suggested that the Secretary of the Interior be directed, under your supervision, to administer all of the various provisions of law cited relating to naval petroleum reserves heretofore created by Executive Order, the oil and gas accruing to the United States from the operation of any wells in said reserves to be utilized by and for the Navy, in accordance with the provisions of existing law.

Under the authority vested in me by said appropriation act, I request and recommend that you take the necessary steps to impose this duty upon the Secretary of the Interior. The details incident to this transfer of authority and to the disposition of the oil and gas produced will be arranged co-ope-

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ratively between the Interior Department and this Department.

Sincerely,

Secretary.

The President,

The White House."

and (2), the draft of a proposed Executive Order, as follows:

"EXECUTIVE ORDER.

Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the Act of Congress approved June 4, 1920 (41 Stat. 812), authorizing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves; the conservation, development, use, and operation of oil and gas bearing lands in Naval Reserves Nos. 1 and 2, California, Naval Reserve No. 3, Wyoming, and Naval Oil Shale Reserves in Colorado and Utah, is hereby committed to the Secretary of the Interior, under supervision of the President, and he is authorized and directed to perform any and all acts necessary for the protection, administration, and development of the resources of said reserves, subject to the conditions and limitations of existing

laws or such laws as may be hereafter enacted by Congress pertaining thereto.

The White House,

May —, 1921."

The enclosed proposed letter from the Secretary of the Navy to the President was never signed by Denby and was never transmitted to the President. The Interior and Navy Departments later conferred and agreed upon the text of an Executive Order and the revised form was personally taken [810] and presented to President Harding by Theodore Roosevelt, Assistant Secretary of the Navy, and upon Roosevelt's statement to the President that the order in its then form was satisfactory to the Interior and Navy Departments it was signed by the President. There is no evidence in this case as to any further conversation or representation by Secretary Fall to President Harding relative to this Executive Order. Mr. Denby, although present throughout the trial, was not called as a witness.

While the plaintiff failed to substantiate the allegations in the bill of false representations by Secretary Fall to President Harding there can be no doubt from the evidence that Secretary Fall was very active in the movement which eventuated in the transfer of the administration and control of the Navy oil reserves from the Navy to the Interior Department and he appears to have at all times dominated the situation relative thereto, the record in this case indicating that Secretary Denby

was passive and even complacent in the matter. In one of his early conferences with the Navy Council Mr. Denby stated that he was going to transfer control of the reserves to Secretary Fall because he considered the reserves "dynamite." This was his attitude throughout all of the transactions involved in this case. His participation in the making and executing of the agreements in suit was perfunctory, passive, and formal. Secretary Fall and Admiral Robison were the real, active, and efficient agents of the Government in the negotiations which resulted in the contracts and leases in controversy.

I am persuaded by an impartial consideration of evidence to believe that Secretary Fall effectuated the idea of transferring the control of the naval oil reserves from that branch of the Government to which they had been committed by Congress into his own hands.

The Executive order as prepared by Finney and as sent to the Navy Department did bodily and wholly transfer the reserves to Secretary Fall for administration, protection, and development. When the draft was submitted to the Navy Department it was objected to by Assistant Secretary Roosevelt, Admiral Griffin, and Commander Stuart, who felt very strongly that the transfer would be a mistake. Roosevelt communicated his and the naval officers' objections to Secretary Denby and urged that the land be not transferred to the Interior [811] Department. But Denby informed him that their protest was too late as the transfer had been agreed

to by the President, Secretary Fall, and himself. Roosevelt, after consultations with Admiral Griffin who at that time was in charge of the naval oil reserves as Chief of the Bureau of Engineering of the Navy Department, suggested to Secretary Denby a modification of the proposed order. Secretary Denby told Roosevelt that if he could obtain Secretary Fall's approval to the change it would be satisfactory to him. Roosevelt personally took the matter up with Secretary Fall and Fall immediately assented to his suggestion. This action by Secretary Fall seems to negative bad faith, but I believe that Secretary Fall considered Secretary Denby's passivity tantamount to relinquishment. The concurrent and subsequent events in this matter confirm this belief.

The change suggested by Roosevelt was the insertion in the order of the following language:

"but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy."

Although Roosevelt was at first entirely opposed to the transfer he was convinced later that on account of the Interior Department being better equipped and organized to undertake the contemplated development of the naval oil reserves it was proper and advisable to effect the transfer subject to the vital reservation which was inserted in the Executive order at his suggestion. It is clear that it was not the intention of the Navy to relinquish

the control of its reserves to the Interior Department, and it is apparent that Secretary Fall's original intention contemplated unrestricted and unqualified transfer of the reserves from the Navy to the Interior Department.

The foregoing and other circumstances and events concurrent with and relative to the promulgation of the Executive order cast doubt upon the motives of Secretary Fall in furthering this transfer. And when viewed in the light of subsequent events and transactions with Mr. Doheny and others irresistibly lead me to conclude that Secretary Fall had conceived plans at the time the Executive order was obtained to carry on negotiations relative to the naval oil reserves [812] at least partially for his personal gain and benefit. That he did later personally profit financially by the transfer is in my opinion clearly shown by the evidence and circumstances in proof in this case.

The essential allegations of the amended bill of complaint relative to the first ground of attack may be summarized as follows:

That subsequent to May 31, 1921, Fall and Doheny agreed to bring about and to make oil leases on the naval oil reserves of the United States fraudulently, not in the public interests or in the Nation's welfare, but secretly, by noncompetitive methods, and for the unlawful purpose of personal gain and profit to themselves;

That in order to accomplish such unlawful purpose they also agreed to arrange and execute the contract of April 25, 1922, the lease of June 5, 1922,

and the agreements of December 11, 1922, by secret, fraudulent and discriminatory methods;

That in furtherance of such purposes and during the course of the negotiations concerning the said contracts and leases in controversy Doheny secretly delivered to Fall \$100,000 in lawful money of the United States;

That the delivery of this said money was not only for the purpose of influencing Fall respecting the said contracts and leases in suit, and in furtherance of the alleged conspiracy, but that Fall's official action in the premises was influenced by such payment;

And further that regardless of such alleged conspiracy such payment of money was of and in itself an act of such flagrancy and wrongfulness by Fall and Doheny as to vitiate and annul all of the contracts and leases in suit upon the ground of sound public policy.

The defendants' answer denies generally and specifically any fraud or conspiracy in the making of the contracts or leases in suit and avers that they were lawfully made and constitute binding agreements.

A conspiracy is a combination of two or more persons to effect an illegal object as an end or means. It is not necessary that the joint purpose or intent of the actors be to commit a criminal or even an unlawful act. It is sufficient if their intent is to do or accomplish a lawful act by surreptitious or unlawful means. This is especially true when the object of the joint purpose of the actors

[813] is the formation or making of a public contract with an officer of the Government.

The conspiracy alleged in the amended bill, while not charged as a crime, contains the elements of a criminal conspiracy. This case however is a civil action and not a criminal prosecution. It is not necessary that the conspiracy be proven to the same degree of certainty as would justify a conviction of Fall and Doheny if they were on trial for criminal conspiracy. The conspiracy in this case has been sufficiently established to require cancellation of the contracts in suit if and when after a fair and complete comparison and consideration of all the evidence and circumstances in proof the greater probability is in favor of the existence of the conspiracy alleged. If the issue of fraud or conspiracy in a civil suit is dependent upon circumstantial evidence the inference of fraud or conspiracy must be reasonable, probable, and unstrained. In such event the conspiracy has been clearly proven.

To conspire to defraud the United States means primarily to cheat the Government out of property or money but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching or those charged with carrying out the Govern-

mental intention. *Hammerschmidt vs. United States*, 265 U. S. 182.

The Supreme Court of the United States has uniformly enunciated the principal that in cases of conspiracy or agreement to defraud the United States the ultimate question is not whether the fraud practiced must have inflicted upon the Government pecuniary loss but that the injury is complete as far as the grievous wrong is concerned when the purpose and effect of the agreement or transaction is to defeat a lawful function of the Government. *Haas vs. Henkle*, 216 U. S. 462.

It is true that no civil action lies for a conspiracy unless there be an overt act that results in damage to plaintiff but the rule announced by the Supreme Court of the United States in the above cited and other cases shows that in cases similar to the one at bar the damages referred to are not necessarily [814] pecuniary loss. If the cases cited by defendants similar to *United States vs. San Jacinto Tin Company*, 125 U. S. 273, can be considered to be in point here there is nothing said by the courts in any of them that would deprive the United States in this suit from obtaining cancellation of the contracts in question if fraud, official misconduct, or conspiracy, as alleged, has been proven, because by the contracts in suit the Nation has been deprived of its control of its naval oil reserve and if such loss is attributable to official corruption then the wrong done to the Nation requires the surrender by the defendants of the governmental property so wrongfully obtained.

In many of the cases cited by defendants the real party in interest was not the United States. Private parties were seeking to enforce essentially private rights in the name of the United States. The United States as a suitor either in its governmental or proprietary capacity was not interested in so far as its property right was concerned in the result of the suits, and hence in such cases was held to have suffered no injury. But all of these decisions establish the rule, which is peculiarly applicable in the case at bar, that the right to the remedy sought by the amended bill in this case exists when the Government has an interest in the remedy sought by reason of the interest in the land, or when the fraud has been practiced on the Government and operates to its prejudice, or when the duty of the Government requires such action.

There has been no decision of the Supreme Court extending the rule of such cases as *Hyde vs. Shine*, 199 U. S. 62, or *United States vs. San Jacinto Tin Company* (*supra*), to suits in equity brought under a law similar to the Act of June 4, 1920, and it is very doubtful in my mind whether the rule of these cases can be applied here because the Act under which these contracts and leases were made is not a part of the public land laws of the United States all of which were designed for the primary purpose of seeing that the lands which were open to settlement might be distributed among individuals, and might be availed of primarily for the benefit of individuals, and incidentally of course for the benefit of the United States by distributing

the population and by offering inducements for citizens to go to various localities where but scant population existed. The naval reserves were never intended to be administered [815] or controlled in the same manner or for the same purpose as other public lands. They were intended primarily and solely for the use and benefit of the United States Navy, and the law which guides the administration of the naval reserves stands alone without any other statutes, and is the sole measure of the legislative intent with regard to the subject matter thereof.

However, it cannot be said that the United States has not suffered injury or loss of a pecuniary nature by the fraud shown in this case. It has parted with, for a period of 15 years at least, all of the oil and petroleum products of its naval oil reserves. It has relinquished its right to make more favorable contracts and leases than those with the defendants. It has been prevented from obtaining more advantageous terms by competition for the leases. It has enabled the defendants to obtain royalty oil from other Government leases that the defendants have been selling to another oil company at a premium above market prices. But I do not base the right of the United States to cancellation and rescission of the contracts in suit as much upon the pecuniary or money nature of the injury shown as upon the right of the United States to be restored to the use and possession of its naval oil reserves where it has relinquished them to private

enterprise because of fraud, undue favoritism, and misconduct of its officers.

The charge in this case does not concern so much pecuniary loss to the United States as it does the right of the United States to annul contracts by which the Nation's naval oil reserves, set apart by Congress exclusively for governmental and national purposes, have been fraudulently and wrongfully obtained by private persons or bodies through wrongful acts of Governmental officers acting conjointly with such private persons or agents of private bodies.

Any corrupt or unlawful arrangement or agreement in which an official of the Government intentionally functions concerning public matters for his private and mercenary gain is an injury and damage to the Government regardless of whether pecuniary loss is sustained by the Government. The Nation in leasing its naval oil reserves does not assume the attitude of a mere bargainer of oil bearing lands for a money value. These lands are held in trust for the United States, and the trustees, that is, the public officers, who administer [816] and control them can do so only for the public welfare and in a manner designed to preserve the integrity of Government. Secretary Fall was a trustee of the highest order in his transactions relative to the naval oil reserves. If a trustee is prompted to act, and does in fact act, because of personal and clandestine motives, and if by so acting he acquires private financial benefit his beneficiary has sustained pecuniary loss. For it is only

because of his fiduciary relationship that he is enabled to deal with the public property at all and his sole emolument for doing so is his salary. Whatever the \$100,000 that was transferred to Secretary Fall by Mr. Doheny, the principal officer of the defendant corporations, may be called, and regardless of the question whether Mr. Fall would have obtained it if he had not been Secretary of the Interior of the United States and at the time transacting public business as such with Mr. Doheny, the fact is that Secretary Fall did obtain it when he was Secretary of the Interior of the United States and a trustee of the public lands of the United States and when as such he was negotiating with Mr. Doheny concerning such lands. And the effect of such transaction in and of itself constitutes a serious injury and damage to the beneficiary, the United States of America.

Moreover, assuming that the right to cancellation and rescission does not ordinarily exist in a suit in equity upon the mere proof of conspiracy or moral wrong or breach of ethics without further showing resultant pecuniary loss, it is questionable whether such doctrine applies in this particular suit. This action is *sui generis*. It is not brought under the ordinary existent processes of the law. It is specially brought. The Joint Resolution of Congress (Vol. 1, U. S. Stat. 68, Cong. Secs. 1-6) declares that—

“the leases and contracts are against the public interests and that the lands embraced therein

should be recovered and held for the purposes to which they were dedicated,"

and not merely authorizes but directs that suit be instituted for the cancellation and annulment of the specific contracts and leases in suit. It would seem, therefore, that the law-making power, with respect to these particular public contracts and leases, intended to and did consider their effect as so injurious and pernicious to public welfare and governmental integrity and so inimical to the purposes for which the naval petroleum reserves were segregated from the public domain as to single them out for special and extraordinary consideration by a court of equity. It appears that Congress has said that if the fraud and misconduct is sufficiently legally proven then regardless of the ordinary rule of showing mere money damage [816½] these contracts and leases should be annulled.

Considering the evidence in this case under the foregoing principles of law the allegations of fraud and resultant damage contained in the amended bill have been in general sustained. In my opinion it has been clearly shown that Secretary Fall and Mr. Doheny had secretly agreed that portions of the naval oil reserves were to be leased to companies controlled by Mr. Doheny by privileged, unfair, and discriminatory means, and that the contracts and leases in suit were and are the result of such secret understandings and agreement.

Before Mr. Fall became Secretary of the Interior the naval oil reserves had been controlled by the Navy Department under the authority of the Act

of Congress of June 4, 1920 (41 Stat. 812). It was only in compromise and settlement of claims concerning rights to public lands under pre-existing laws that the Interior Department had any powers or concern with such reserves. Under the leasing act of February 25, 1920 (41 Stat. 437), the Secretary of the Interior did exercise certain rights with respect to royalty oils coming to the Government from leases in the naval oil reserves but neither that act nor any other law gave the Secretary of the Interior any power whatever to lease or otherwise develop naval reserve lands except in cases of compromise of pre-existing placer mining claims.

The President of the United States under the leasing act (*supra*) had a limited further power over naval reserve lands but no general power. There was no general power or discretion vested by Congress in any officer or Department to make such disposition or use of naval reserve lands or of royalty oil accruing under leases of these lands as might be best for the interests of either the Navy or of the United States except under the authority of the Act of June 4, 1920 (*supra*). Congress by this law intrusted to the Secretary of the Navy the conservation, development, use, and operation of these valuable and important public and governmental lands.

The legal aspect of this measure will be considered in another portion of this opinion dealing with the second general contention of the plaintiff in this case. In the present consideration it is only

necessary to advert to the Act of June 4, 1920, as manifesting a clear and unmistakable intention by [817] Congress to repose exclusive control over the naval oil reserves in the Secretary of the Navy pursuant to the terms of the Act.

In line with the policy of the Government, as expressed in said act, and in April, 1920, Secretary of the Navy Daniels had established in the Navy Department the Oil Fuel Office and had detailed Commander H. A. Stuart thereto. This office was under direct and immediate control of the Secretary of the Navy and continued to be so throughout the administration of Secretary Daniels, being carried over and continued under Secretary Denby until he by an order dated October 18, 1921, transferred it to the Bureau of Engineering of the Navy Department and made it immediately subordinate to and under the direct supervision of that Bureau.

Friction and discord was manifested between Secretary Fall and the naval officers in charge of the reserves shortly after Secretary Fall assumed charge of the Interior Department and this condition prevailed until, as I have stated, the Oil Fuel Office in the Navy was abolished and all matters pertaining to the reserves were assigned by Secretary Denby to the Engineering Bureau of the Navy. The Chief of this Bureau at the time was Admiral J. K. Robison, who had been detailed as such about October 1, 1921. Admiral Robison was a friend of Edward L. Doheny, and during the World War his son, Edward L. Doheny, Jr., had been a naval officer on a ship commanded by Admiral Robison

and a friendship and attachment thus formed had grown and increased between the Admiral and the Dohenys until their relations at the time of Admiral Robison's detail as Chief of the Engineering Bureau of the Navy are best shown by the following letter written by the Admiral when he assumed his new command:

"6 October, 1921.

My Dear Mr. Doheny:

I have wanted to write to tell you of the good fortune that has come to me. Because of the many ways in which you have indicated your friendship for me, I am sure that you will be glad. The President has nominated, I have been confirmed, and am now serving as Engineer-in-Chief of the Navy.

It is a pretty good billet. As you know, it gives me control of large activities, rank while holding the office of Rear Admiral, and in particular it gives me responsibilities and authority in connection with the maintenance and upbuilding of our Navy that I am glad to assume. To have been selected from my fellows for this position is grateful,—the principal joy that I get, of course, comes from the satisfaction of my family and [818] friends.

With best wishes for your future and with affectionate remembrance of Mrs. Robison and myself to your family, I am

Most cordially yours,

J. K. ROBISON,
Engineer-in-Chief, U. S. Navy.

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Mr. E. L. Doheny,

President, Mexican Petroleum Company,

120 Broadway, New York, N. Y."

In 1917, on an occasion when Mr. Doheny visited his son on board a warship commanded by Admiral Robison, the Admiral and Mr. Doheny had discussed casually the naval oil reserves and Mr. Doheny had told Admiral Robison that on account of drilling near the reserves by outside private parties the oil was being drained off the reserve and that it would not be long until there would be no oil left in the reserves. This was the only conversation or dealing between Admiral Robison and Mr. Doheny until after Admiral Robison was placed in charge of the reserves by Secretary Denby in October, 1921.

On October 9, 1921, Admiral Robison had a conference with Secretary Fall regarding the naval petroleum reserves. At this conference he learned of a letter concerning the reserves that Secretary Fall had written to Secretary Denby in July which will presently be referred to. This was his first connection with the reserves. He had not at that time discussed the reserves with his chief, Secretary Denby. As the result of his conference with Secretary Fall and others in the Interior Department he found the opinion that the reserves were being rapidly depleted by drainage and he then remembered the talk he had with Mr. Doheny in 1917. In conjunction with Secretary Fall he then set out to formulate and to execute some plan to

exchange the crude oil in the reserves for fuel oil to be stored at different points.

Admiral Robison, when acting as aide to Secretary Denby in March, 1921, and later upon being detailed to the Engineering Bureau, manifested an ardent and patriotic desire to construct and supply a reserve oil fuel station at Pearl Harbor, Hawaii, and in general to adopt a program for the establishment and construction of reserve oil fuel stations for the Navy in order to strengthen the national defense. After his conferences with Secretary Fall his desire became more intense and he then concluded if possible to use the royalty oil from naval [819] reserves to build such stations and to supply and store them with fuel oil for future naval use. The testimony of Admiral Robison and the circumstances in proof convince me that Admiral Robison had no ulterior motive or mercenary purpose in any of the transactions involved in this case.

This was an entirely new activity and was one of doubtful legal authority. There was a serious question at that time in the minds of Secretary Fall, Admiral Robison, Mr. Doheny, and every other person who discussed or contemplated the subject as to whether the right to establish reserve oil fuel stations existed without further legislation. It was then doubtful in the minds of all whether the Act of June 4, 1920, was broad enough to authorize the program. Up to this time the royalty oil due the United States from leases in the reserves had been either sold outright and the

money deposited in the Treasury or this oil had supplied merely current naval needs. It was Admiral Robison's fervent purpose to carry out this new project if possible and to do so without going to the Congress for further legislative authorization.

Admiral Robison and the Dohenys visited socially and discussed the naval oil reserves and the proposed Pearl Harbor project as early as December, 1921, and Mr. Doheny told Admiral Robison during this time that his company would bid on the Pearl Harbor project and that its bid would be one that would not involve one cent of profit to him or to his company. Admiral Robison in his enthusiasm over the possibility of accomplishing his desire to strengthen the national defense told Secretary Fall of Mr. Doheny's promise. Secretary Fall however had previously seen and talked with Mr. Doheny regarding the plan of using royalty oil for tankage and it is clear that Mr. Doheny was already favorable to the plan and had told Secretary Fall that he would make a bid thereon and that his bid would be at cost.

That Secretary Fall conceived the plan of exchanging the royalty oil due to the United States from leases on the naval petroleum reserves for fuel oil in storage tanks, and had suggested to Secretary Denby, long before Admiral Robison became connected with the plan, that he, Fall, would undertake to effectuate the idea if Denby was willing, is positively shown by these two letters: [820]

“Department of the Interior,
Washington.

July 23, 1921.

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13668-84: 278

Hon. Edwin Denby,

Secretary of the Navy.

Dear Mr. Secretary:

In connection with the recent authorization to the Pan American Petroleum Company and the United Midway Oil Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be made for the handling and disposition of its royalty oil from said wells as well as from any other wells in naval reserves too, which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange. Preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

1290 *Pan American Petroleum Company et al.*

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I should like to hear from you on the subject as soon as possible.

Sincerely,

ALBERT B. FALL,
Secretary."

"Washington, July 29, 1921.

My dear Mr. Secretary:

Replying to your letter of the 23d of July, I am glad to acquiesce in the suggestion made by you.

It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Company and the United Midway Oil Company) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible, for tanks in which such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve Wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation 'Fuel and transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve as charge against this appropriation.

EDWIN DENBY."

This correspondence comes with significant swiftness after a notable letter written by Secretary Fall to Mr. Doheny on July 8, 1921, which will be referred to presently, and which is indicative of conferences and negotiations [821] between Secretary Fall and Mr. Doheny wherein plans for future drilling of the reserves were discussed between the two men. And it is a fair inference from this correspondence that they had at such times discussed the precise matter that is the central feature of the contracts and leases in suit, to wit, the leasing of the naval oil reserves and exchanging the oil therefrom for fuel oil in storage tanks.

The contention of defendants that the leasing of naval reserve No. 1, which was accomplished through the contracts and leases in suit, was not the act of the Interior Department but was done by the Secretary of the Navy has little merit when viewed by the light of the evidence. Not only is it shown that Secretary Fall initiated the idea and suggested its accomplishment to Secretary Denby, but Secretary Denby, as I have previously stated, showed early in the negotiations and throughout a disinclination and an unwillingness

to participate in the negotiations in any active way. There is no doubt in my mind that he intended to and did relinquish real control of further leases in the reserves to Secretary Fall. At a meeting of the General Council of the Navy, which has been previously adverted to, held October 18, 1921, Secretary Denby stated that unless there was objection he would transfer all of the fuel oil activities theretofore carried on under his office over to the Bureau of Engineering, and that he wanted the Interior Department to handle the leases for the best interests of the Navy, saying:

“that matter of leasing is most difficult and dangerous thing to be done. It is full of dynamite. I don't want to have anything to do with it.”

The evidence in this case shows that by October 25, 1921, both Secretary Fall and Admiral Robison had agreed upon the adoption of a policy whereby royalty oil should be bargained for tankage and its contents of fuel oil at Pearl Harbor, and that they had further agreed at that time that any negotiations relative to the carrying into effect of such policy were to be kept secret so that their intentions could not be thwarted by congressional interference or become generally known to the public. The contention of defendants that the secrecy which attended all of the negotiations leading up to the contract of April 25, 1922, and of December, 11, 1922, were because of Navy war plans is in my opinion not sustained. Even if the Pearl Harbor construction was such as to require secrecy the oil

leases in the naval reserves demanded no such safeguard. The secretive manner in which these leases were made cannot be justified by any war emergency plan.

Admiral Robison presented the matter of his negotiations and conferences with Secretary Fall to Secretary Denby and procured from him a letter to Secretary Fall, as follows: [822]

“October 25, 1921.

“My dear Mr. Secretary:

Rear Admiral Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

2. That the amount of drilling with consequent exhaustion of the reserves shall be kept as low as practicable without risking the depletion of the reserves by other parties.

3. That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for naval use, and that this exchange of crude oil for fuel oil will be effected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on

the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

4. That the equivalent of so much of the royalty oil as is not used by the Navy is to be devoted to the construction of oil storage at Pearl Harbor, Hawaii, and at other points to be hereafter designated by the Navy Department, the cost of the tanks to be credited to the royalty due the Navy.

5. That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

6. That the terms for conversion of the crude oil at the well to fuel oil at tidewater or in tanks to be provided by the lessor will be submitted to the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

8. That every effort will be made by the Interior Department to expedite the solution of this problem so that fuel oil at Pacific tidewater in exchange for royalty crude oil may be delivered as soon as possible to naval vessels and so that the erection of suitable storage facilities for 1,500,000 barrels of fuel oil at Pearl Harbor may be undertaken and expedited.

9. That the development of naval petroleum reserve No. 3 is not to be undertaken except to pro-

tect the Government against depletion of the reserve by other parties.

10. The general intent of this agreement is to transform royalty oil into either (a) fuel oil for current naval use, or (b) fuel oil stored where required by the Navy as a reserve, the storage, of course to be naval property and to accord with naval requirements.

In accordance with the foregoing understanding there is returned herewith letter from the Interior Department concerning leases that it is proposed to enter into with certain parties in naval petroleum reserve No. 1. Such details are, under the foregoing announced policies, to be left entirely to the Department of the Interior.

Information is requested as to whether the foregoing policies are in all respects agreeable to the Department of the Interior, and also when it may be expected that the Navy Department will begin to receive fuel oil as part of its royalties.

EDWIN DENBY." [823]

This letter was prepared by Admiral Robison in collaboration with Secretary Fall. It contains no direct reference to an intention to grant further additional leases in the reserves to provide more royalty oil with which to build tankage at Pearl Harbor although at about the time that it was written Secretary Fall and Mr. Doheny had discussed the granting of additional leases as a consideration for the Pan American Petroleum and Transport Company taking the Pearl Harbor contract. It seems apparent that Admiral Robison

was not then aware of that vital and valuable part of the understanding and arrangement that had been developed by Secretary Fall and Mr. Doheny regarding the naval oil reserves.

I am satisfied that Secretary Denby in sending this letter did so believing that it was necessary in order to prevent present drainage from the naval oil reserves. The tenor of the letter so indicates. And I am also convinced that there was no present or threatening danger of such drainage, because the Government had made sufficient offset and defensive leases to protect the reserves from drainage at that time. In my opinion the contracts and leases involved in this suit were not made or intended by Secretary Fall, Admiral Robison, or Mr. Doheny as necessary imminent relief measures for the naval oil reserves.

Secretary Fall answered the letter on October 30, 1921, by stating that he would carry out the suggestions and intentions of the Navy Department. The October 25th letter gives much power and wide discretion to the Interior Department regarding oil leases in the reserves, and really confers the powers on that department which Secretary Fall had intended to acquire by the Executive order of May 31st before Roosevelt's amendment. The aspect of the project covered by the October 25th letter that specially interested Secretary Fall was the leasing of the naval oil reserves. The paramount interest of Admiral Robison was the building and equipping of the Pearl Harbor reserve fuel station. By this coalescence of interest the two men worked to at-

tain the same end, but through entirely different motives.

Secretary Fall and Mr. Doheny had been friends for thirty years. They had been associates in mining ventures in New Mexico in early days. An attachment [824] had grown up between them that is experienced only by men who pioneered and prospected together in quest of fortune in the fastness of the mountains and deserts of the great West. They had been separated for some time. Fall had remained in New Mexico and had entered public life. Doheny had gone to California and had engaged in the oil industry. Fall had been unsuccessful in accumulating money. He was a prominent but a poor man. Doheny on the other hand had been prosperous and had become wealthy. While the strong friendship of the early days in New Mexico had extended over the years that had intervened the two men had seen little of each other until Fall became Secretary of the Interior. The record in this case is silent as to any business or money transactions between these two men until Fall assumed the Cabinet office. In this official position, having much to do with oil bearing public lands, naturally the early intimacy was revived and renewed so that Secretary Fall and Mr. Doheny and their families saw much of one another during the summer and fall of 1921, frequently visiting at Washington, New York, and elsewhere. It is not only unnatural and unreasonable to infer that at these meetings they had no discussions concerning the nation's oil lands but, as previously

stated, there is positive evidence in this case that they had discussed using royalty oil for tankage and also the proposed Pearl Harbor project during the months of October and November, 1921, and they probably had discussed the matter much earlier in that year.

In July, 1921, a lease to drill offset wells along the North and East lines of Section 1, Township 31 South, Range 24 East, Mount Diablo Meridian, being part of naval oil reserve No. 1 in California, was given by the Interior Department to the Pan American Petroleum Company. This lease was essentially defensive, being necessitated by drilling activities of private owners of adjacent oil lands outside of the reserves, and was granted in conformity with the established policy that existed and was pursued until Secretary Fall obtained control of the naval oil reserves. I have adverted to this old policy of the Navy that its oil reserves should be kept under ground and that no leases to drill in the reserves should be given unless such were or appeared to be imperative to prevent drainage. Such was not only the policy of all previous administrations but was also Secretary Denby's personal attitude throughout all of these transactions in which he took part. This lease of July, 1921, was awarded to the Pan American Petroleum Company after competition [825] and the royalty thereof was fifty-five and one-half per cent.

After the lease had been in operation some time it developed that the production thereunder was insufficient to justify the high royalty thereof and

the Pan American Petroleum Company applied for a reduction. Its petition for relief was filed November 22, 1921, and although it was denied any reduction of royalty nevertheless it was given other leases in reserve No. 1 at reduced royalties, to wit, from 12½% to 25%. This transaction in my opinion had no direct relation to the Pearl Harbor matter or the granting of additional leases in the naval oil reserves with which to pay for the Pearl Harbor project. It was solely a compromise arrangement arising out of the lease of July 12, 1921. The transaction however was handled and concluded under the personal direction of Secretary Fall.

When this lease of July 12, 1921, was signed by Secretary Fall he wrote a letter to Mr. Doheny in which he showed in no uncertain terms his determination to handle the naval reserves as he desired. This letter reads:

“July 8, 1921.

My dear Colonel:

I desire to express to you my very sincere appreciation of your generosity and patriotism in surrendering a portion of your lease-bid in naval reserve No. 1.

I have settled the matter to-day and have signed your leases, sending them over to you by Mr. Cotter.

I filed with the President a letter explaining this entire situation and the conclusions reached and action which I have taken. In this letter to the President among other things I said:

“Thus my position is that of a trustee for the reclamation fund and for the State in one in-

stance, and a trustee for the Navy for the public lands upon which there is no private claim within the naval reserve.

‘Holding the view which I did hold, as to the Midway Co. having some equity, but being desirous of adjudicating the matter if possible, to the end that the Navy might have no possible objection, I called upon Colonel Doheny, head of the Pan American Petroleum Company, by telegram, stating the facts to him and that he was entitled to his lease and would have it executed under one of his bids, but asking if it were possible for him to assist me in an adjustment of the Midway claims, by agreeing to surrender 8 wells out of the 22 which were advertised by the Navy and allotted to him under his bid; he retaining the lease upon the other 14.

‘I thought that I was imposing upon Mr. Doheny and even at the insistance of the Navy officials was not justified in doing so except through a personal appeal based upon our long time acquaintance and my knowledge of the patriotism and sense of justice.

‘I received an immediate and favorable response and I have had the leases drawn to himself for the 14 wells, and to the Midway Co. for 8 wells which he surrenders.’

I desire the President’s file to show my appreciation of your action in this matter, which, however, I had explained to him verbally. [826]

I shall not forget your assistance in this case.

There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under the direction of the President, without calling any of his forces in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau in his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy.

Very sincerely yours,

ALBERT B. FALL.

Col. E. L. Doheny,

Suite 2805, 120 Broadway, New York City."

The contention of defendants that the leases in suit were the work of Secretary Denby and that Secretary Fall acted merely as his agent is utterly devoid of merit when considered in the light of his ultimatum in this letter and his attitude and conduct throughout all of the negotiations that resulted in the making of the contracts and leases in controversy in this case.

The formal lease effecting the compromise concerning the royalties of the July 12th lease is dated December 14, 1921. It was signed by Assistant Secretary Finney, as Secretary Fall was absent from Washington at that time. As I have said, at the time the relief from the July 12th lease was ordered by Secretary Fall he and Mr. Doheny were

and had been in consultation over the exchange of royalty oil from the naval reserves for fuel oil and tankage. They had been discussing and negotiating specifically concerning the Pearl Harbor project and the leasing of more lands to Mr. Doheny's Companies in the naval oil reserves to pay for the same. They had reached a definite understanding and agreement concerning the making of the contract which was later formally executed on April 25, 1922, wherein there is contained the valuable preferential right to lease practically the entire naval oil reserve. The record also clearly established that simultaneously Secretary Fall had told Mr. Doheny of his misfortune and of his desire to secure more land near his ranch in New Mexico but of his inability to do so on account of financial embarrassment. Mr. Doheny had told Secretary Fall during this time that he would loan him the money to make the desired purchase and on November 30, 1921, at the very time that the contract of date April 25, 1922, and the granting of further leases in the naval oil reserves was being discussed by Secretary Fall and [827] Mr. Doheny orally and by correspondence Mr. Doheny advanced and caused to be delivered to Secretary Fall \$100,000 pursuant to his promise.

It is claimed that this was a personal transaction between these two old friends and had no connection with and was entirely independent of the public business dealings that were then in progress by Mr. Doheny as the principal officer of the Pan American Petroleum and Transport Company with Secretary Fall as the trustee of the naval petro-

leum reserves and Secretary of the Interior of the United States. It is impossible for the court to so conclude.

It is this powerful, ineffaceable, and unexplained circumstance which impells me to cancel the leases which gave to the companies controlled by Mr. Doheny a property right of immeasurable value. This incident is the central, insurmountable, and decisive fact in this case. The injury that it has done the Nation as well as the distrust of public officers that it has caused cannot be overestimated. This colossal infamy regardless of whether it was a bribe, a gift, or a loan, requires this court in conscience to strike down the deals which are inextricably connected with it and to restore to the Nation its naval oil reserve. Neither of the men who participated in this extraordinary transfer of money have given this court an opportunity to hear his version of this incident from the witness-stand and the record which they have written elsewhere concerning it, and its correlated events, spell conspiracy.

If the incident is to be viewed and judged in the light of human experience and reason, and is to be determined according to the usual, ordinary, and natural probabilities in such situations it cannot be said with any degree of certainty that the delivery and payment of this large amount of money at such a time had nothing to do with Secretary Fall's official action and conduct whereby he actively participated in awarding to companies controlled by Mr. Doheny rights and leases in the naval oil reserves of great value. The circumstance itself

is so indicative of improper influence and official misconduct and was so conducive to favoritism as to require a court of equity to conclude that any advantage or benefit obtained from the Government by Mr. Doheny's companies through the agency or official act of Secretary Fall was influenced, at least, by the payment. It is possible that it did not affect or influence Secretary Fall in doing what he did relative to these contracts and leases. It is not probable. It has not been satisfactorily or sufficiently [828] explained in this case.

The case, however, does not require the Court to predicate its finding on this telling and decisive incident solely upon the time and amount of the money transfer. The manner in which it occurred and the conduct of the two men relative thereto arouse further suspicion and indicate a consciousness of wrongdoing by them.

On November 28, 1921, Mr. Doheny wrote Secretary Fall a letter which in my opinion substantiates the charge of the conspiracy alleged in the amended bill and which undeniably discloses that the two men had been conferring and negotiating regarding the Pearl Harbor Contract of April, 25, 1922, and that further leasing of the reserves was also then under consideration by them. This letter is as follows:

**"PAN AMERICAN PETROLEUM AND TRANS-
PORT CO.**

Office of the President.

New York, November 28, 1921.

The Honorable the Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

Along the lines of your suggestion, I have made some inquiries regarding the cost of constructing tanks for the storage of one and one-half million barrels of fuel oil at Pearl Harbor. I find that the best price obtainable for these tanks, the Government to stand the cost of transporting the material from the ship's side to the tank site, and the cost of grading and otherwise preparing the tank site, is \$19,960 per tank, or \$0.363 per barrel of storage capacity.

The present price of crude oil in the field in California is \$1.13 per barrel. The present cost of fuel oil delivered at Pearl Harbor is \$1.90 per barrel.

The cost of 1,485,000 barrels of fuel oil delivered at Pearl Harbor at present rates would be \$2,821,500, which added to the cost of constructing the 27 tanks necessary to store this amount of oil, which is \$538,920, makes a total of \$3,360,420.

Therefore, were we to construct the tanks and furnish the oil on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserves and to

be leased to us, it would require a return to us in royalty crude valued at 3,360,420, or 2,973,823 barrels, figured at today's price. Of course interest on the money invested should also be figured until final adjustment is made through the payment of royalty oil.

I suppose you will turn this matter over to First Assistant Secretary Finney, who, with Rear Admiral Robison, may arrange the details of it during your absence, and as I also expect to be absent, I am confidentially furnishing Mr. Cotter with the information so that he can intelligently discuss the matter with Mr. Finney.

Cordially yours,

E. L. DOHENY." [829]

It is also argued by counsel for defendants that this letter was a mere estimate, of the probable cost of the tankage at Pearl Harbor. Its language connotes something more. But if it requires interpretation it should be considered in its entirety and construed in the light of known surrounding circumstances.

Early in November, 1921, the Pan American Petroleum and Transport Company by letters and telegrams had requested bids from the Lacy Manufacturing Company of Los Angeles, California, for the construction of tanks at Pearl Harbor, Hawaii, and the figures given in the November 28th letter were those obtained from the Lacy Company.

After Mr. Doheny's letter of November 28, 1921, was received by Secretary Fall it was delivered to Dr. H. Foster Bain, who at that time was Director

of the Bureau of Mines of the Department of the Interior. Sometime before Secretary Fall handed this letter to Dr. Bain he had told Bain either that he had asked Mr. Doheny or Mr. Doheny had volunteered to have an estimate made of the cost of putting up storage to the extent of one and one-half million barrels of oil. Dr. Bain testified that the first time that he heard of Secretary Fall's plan to use royalty oil from the reserves as a consideration for tankage and fuel oil was at a conference with Secretary Fall when Admiral Robison was present subsequent to October 23, 1921, and no mention whatever was made by Secretary Fall or any person at such conference that it would be necessary or that it was contemplated to grant further and additional leases in the naval oil reserves to Dr. Doheny. At such conference, however, Secretary Fall told Dr. Bain that he was expecting a communication from Mr. Doheny on the subject of the construction of the Pearl Harbor project of providing storage for 1,500,000 barrels of fuel oil in consideration of Government royalty oil from the reserves and that he expected Mr. Doheny to bid on the proposition. Although he said nothing to Dr. Bain on the subject of further leases to Dr. Doheny the letter which he said he was expecting besides containing the information he told Bain he expected also contained language indicating that there had been an understanding and agreement to grant further leases.

This letter of November 28th Dr. Bain brought to Assistant Secretary Finney about the middle of

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December, 1921, and requested that Finney write to Mr. J. J. Cotter, a vice-president of the Pan American Petroleum and Transport Company, and request Mr. Cotter to call upon Dr. Bain relative to Mr. Doheny's letter. Mr. Finney complied with this request and wrote the following letter: [830]

"DEPARTMENT OF THE INTERIOR,
Washington.

December 16, 1921.

Mr. J. J. Cotter,

Pan American Petroleum and Transport Com-
pany,

120 Broadway, New York, N. Y.

Dear Cotter:

Will you be in Washington any time between now and December 27? If so, please call on Director Bain of the Bureau of Mines who wishes some information from you with respect to the matter discussed in Mr. Doheny's letter of November 28, 1921.

Please let me know when you will be here.

Sincerely,

(Signed) E. C. FINNEY,

Acting Secretary."

Upon the office copy of said letter in the files of the Interior Department there appears a notation in the handwriting of Dr. Bain, reading:

"I asked Mr. Finney to send this since Doheny's bid will be considered through the New York office and I thought we might get it outlined before we go West.

BAIN."

Here is a definite statement showing that it was understood by Dr. Bain that the November 28th letter was more than a mere estimate.

Admiral Robison surely regarded the November 28th letter from Mr. Doheny as a definite proposition, because at a meeting of the General Council of the Navy on November 29, 1921, after he had seen and read the letter, he told the Council that he had with him at that time a definite proposition to supply the 1,500,000 barrels of storage at Pearl Harbor and to complete it within the next calendar year. He did not at that time regard the letter as a mere tentative incomplete prospective suggestion, for at that time he further said to the Council: "All I have got to do is to say on this letter is we can get the tanks built." The letter of November 28, 1921, was not a mere estimate as counsel for defendants contend.

The words in the letter "lands within the naval reserve and to be leased to us" imply nothing if they do not indicate an understanding previously had, and when read in connection with the final paragraph of the letter show that it was contemplated and agreed between the two men that a contract would be arranged [831] along the lines of the letter and that the only matters remaining undetermined were the "details" of the plan. This was unquestionably Mr. Doheny's mind when he wrote the letter and undoubtedly Secretary Fall's when he received it because he immediately sent it to Admiral Robison with a covering letter, as follows:

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"November 29th, 1921.

My Dear Admiral:

Mr. Cotter will wait upon you with data, etc. with relation to oil tanks and royalty oil in connection with Pearl Harbor demands.

I have asked him also to hand you, for your inspection the original of a letter from Colonel Doheny addressed to myself, containing a resume of the data.

Should you think best to accept this proposition then of course it would be necessary, in my judgment, to turn over to Colonel Doheny, if we can do so, leases upon further wells or area in the naval reserve in which he is now drilling. If this is done it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American.

The gas pressure is lessened to such a degree that the out-put of the wells of the two latter companies, as well as of other companies drilling in this neighborhood, is decreasing and is very disappointing. The two companies named are pumping their wells and of course they are not making any money but will experience a loss in the payment of the fifty-five per cent royalty to the Government.

If you approve the proposition, will you kindly indicate to me such approval by simple endorsement upon Co. Doheny's letter to myself, signed by yourself. Your simple O. K. will be sufficient.

Very sincerely yours,

ALBERT B. FALL.

Rear Admiral John K. R. Robison,
Engineer-in-Chief, Navy Department."

The matter is not referred to as an estimate but as a proposition which needs only the simple O. K. of Admiral Robison and the deal will be carried out. There is no doubt expressed of Secretary Fall's intention to give Mr. Doheny further leases. The doubt Secretary Fall entertained was the legal right to do so, and he never sought legal advice in the matter but later accepted and acted upon an opinion which Admiral Robison obtained from the Judge Advocate-General of the Navy which held that the right existed. This opinion was requested by Admiral Robison on November 30, 1921, and was given on December 3, 1921.

The messenger who took the above letter from Secretary Fall to Admiral Robison was Mr. J. J. Cotter, Vice-president of the Pan American Petroleum and Transport Company. What Mr. Cotter was doing in Secretary Fall's office, and what conversation he had with Secretary Fall on this eventful day, has not been disclosed in this case. [832] Admiral Robison returned the letter of November 28th to Secretary Fall and Secretary Fall, as before stated, handed it to Dr. Bain with instructions that Bain work out a contract to carry out the Pearl Harbor project. This letter of November 28th, was not placed in the general file of the Interior Department. It was kept in a safe in Dr. Bain's private office with other documents of a confidential character.

There is no evidence that any other individual

or concern was asked by Secretary Fall to estimate on this project, although Admiral Robison testified that Secretary Fall told him that he was going to request estimates from several oil concerns.

Another notable circumstance in connection with the November 28th letter is the fact that at the time of its receipt, which was months before any invitations to bid were sent to others, the Pan American Petroleum and Transport Company had not only been permitted by Secretary Fall to negotiate with a view of bidding but it had actually submitted a bid to Secretary Fall on the Pearl Harbor project. This was privilege and discrimination that was unwarranted and improper, and in view of the personal transactions between Secretary Fall and Mr. Doheny at the time, was significantly suspicious.

On November 29, 1921, whether before or after he received Mr. Doheny's letter we do not know, Secretary Fall in Washington, D. C., telephoned to Mr. Doheny in New York that "he was prepared now to receive that loan, to make the loan" if Mr. Doheny was willing to make it. Mr. Doheny immediately arranged to procure and transmit the money to Secretary Fall. He did so in a peculiar, suspicious and irregular way. He knew that Secretary Fall wanted the money to make settlement in New Mexico for property in New Mexico. He also knew that Secretary Fall was leaving immediately for New Mexico. He did not send the money to New Mexico and he did not transmit it by the customary

commercial mediums. Although he was a man of great wealth and financial power, instead of drawing the money himself or from his bank account, he had his son obtain it from a bank with his son's check, and he had him obtain the \$100,000 in currency. He then had his son wrap the currency in paper and place it in a handsatchel and personally convey it from New York to Washington and personally deliver it to Secretary Fall in Washington. Fall immediately left Washington [833] and carried the \$100,000 in currency on the train across the continent and deposited it in different banks in Texas and New Mexico and later by checks thereon applied it on the purchase price of the lands.

There is no record of any kind made of this transaction in the personal or business books or records of Mr. Doheny or of any of his companies or enterprises. No one but Secretary Fall, Mr. Doheny and his son knew of the transaction until long after the contracts and leases in question were made. The utmost secrecy concerning the event prevailed and was maintained by everyone until it was revealed by Mr. Doheny in January, 1924, in an investigation of leases upon naval oil reserves by the Committee on Public Lands and Surveys of the United States Senate.

When the \$100,000 was delivered to Secretary Fall on November 30, 1921, he executed, signed, and delivered his promissory note, payable on demand, after date, to Edward L. Doheny, or order, in the sum of \$100,000 with interest at no suffi-

cient rate. He handed this note to E. L. Doheny, Jr., who took it to New York and gave it to his father within a day or two after it was made. No security of any kind was given. No payment of principal or interest has ever been demanded or made. The note is a complete enforceable evidence of indebtedness was never deposited in any receptacle other than the pocketbook carried by Mr. Doheny on his person.

About two weeks after receiving the note and on the eve of his departure from New York for his home in California Mr. Doheny mutilated the note by tearing the signature therefrom. He gave the portion containing Fall's signature to his wife and retained in his personal possession the other part of the note. He told Mrs. Doheny that he had made Mr. Fall this loan of \$100,000 and that if on their journey homeward anything should happen that he and Mrs. Doheny should be killed in a wreck and their executors found the note and would present it and press Mr. Fall for it, Fall would then be worse off than he was before the money was loaned. And he did not wish Mr. Fall to be pressed for payment of the note.

Before the Senate Committee Mr. Doheny similarly explained this peculiar act by saying that he was about to entrain for a long journey he wished to avoid the possibility of the note as an enforceable obligation of Mr. Fall's coming into the hands of others. He said that if he was killed en route he did not wish Mr. Fall [834] pressed for payment by his executors for if the note in its entirety

fell into the hands of his executors it would be their duty to enforce its payment. And if both he and his wife were killed in the same accident part of the evidence of Fall's obligation would be found on his body and part thereof on Mrs. Doheny's body and no one would know the connection of the two fragments except his son who was familiar with the circumstances of the delivery of the money and who would not press Mr. Fall for payment on account of his financial condition.

If this peculiar money transaction was a pure, private and personal affair in which these two old friends innocently participated, if it were a pure and unadulterated loan, as defendants contend, it is peculiar and unnatural that it should have been accomplished and attended with so many suspicious circumstances. To sustain the contention of the defendants with respect to this money transaction the court must lay aside every natural, human and probable construction and accept an unusual, extraordinary and improbable explanation. The contention of the defendants with respect thereto cannot be sustained upon any other hypothesis. This court cannot give its judicial sanction to any such unnatural and unreasonable explanation.

The safest, salutary and correct rule concerning the validity of a public contract made by a governmental officer with a private citizen or concern where simultaneously and concurrently with negotiations for the public contract the officer clandestinely received and accepts a substantial amount of money from the person or concern with whom

he is negotiating, and who later receives the public contract containing valuable rights to him or to his principal, is to abrogate, annul and set aside the contract as *contra bonos mores* and against public policy. This rule should be applied in all such cases regardless of whether the money transaction is a loan, a gift, or a bribe. In such a situation the whole contract and all official conduct relating thereto are tainted and it is impossible to say to what extent the contract and official acts were influenced by the concurrent clandestine money transaction.

See: *Graham vs. United States*, 34 Ct. Claims, 237.

Crocker vs. United States, 240 U. S. 74.

Washington Irr. Co. vs. Krutz, 119 Fed. 279.

The natural and irresistible inference of fraud in such cases is present, and can be overcome only by clear and convincing proof that it did not exist. No such proof has been offered in this case. [835]

Mr. Doheny himself recognized the significance of this money transaction in the dealings with Secretary Fall that eventuated in his companies obtaining leases on the naval oil reserves from which he expected his companies to make a profit of \$100,000,000. In his testimony before the Senate Committee the following appears:

“Senator WALSH of Montana.—I can appreciate that on your side, but looking at it from Senator Fall’s side it was quite a loan.

“MR. DOHENY.—It was, indeed: there is no

question about that. And I am perfectly willing to admit that it probably caused him to have such a feeling that he would have been willing to favor me. He did not carry on these negotiations. That is the point I would like for you to understand; that Senator Fall, in my opinion, was not influenced in any way by this loan, because the negotiations were carried on by men who were not under his control."

.....
"The CHAIRMAN.—I am not asking you about the question of collusion: I am examining you concerning your own statement, that by reason of your accommodation to Mr. Fall you think that had he a discretion to exercise he might have been more likely to exercise it in your favor."

"Mr. DOHENY.—Why, I admit that.

"The CHAIRMAN.—Very well.

"Mr. DOHENY.—I don't think he is more than human.

Mr. Doheny based his belief that Secretary Fall was not influenced by the money on the ground that Secretary Fall took no part in the making of the contracts and leases, "that the negotiations were carried on by men who were not under his control." Secretary Fall's activity has already been shown and it appears throughout all of the negotiations and until the entire naval reserve No. 1, except one small area, was leased to the Pan American Petroleum and Transport Company and its subsidiary. He was the final and decisive factor in the transactions and especially in settling the royalties

which the defendants would be required to pay, and it is the magnitude of the leases and the amount of the royalties exacted that determine the value of the leases to Mr. Doheny and the defendants.

The plan to exchange royalty oil due to the United States from the naval reserves for fuel oil and storage therefor involved two main ideas; one of special and essentially naval concern, i. e., constructing and [836] equipping reserve fuel oil stations at strategic points; and the other, leasing to private parties valuable oil lands in the naval reserves. This last element, while correlated to the other, was what made the project of commercial interest to oil producers and companies. It was this last element that was secretly arranged between Secretary Fall and Mr. Doheny. It was this element that was sedulously concealed from all other oil companies and prospective bidders.

Admiral Robison, for the Navy Department, was the dominant factor in accomplishing the first idea; while Secretary Fall exercised control of the second. The contracts not only show this to be true but the evidence proves that it was the case. All the important and decisive questions relative to leases and royalties are reposed by the contracts of April 25th and December 11th in the Secretary of the Interior. The proof in the case demonstrates that Secretary Fall was the person to finally settle the question of what leases should be given and what royalties should be exacted.

Admiral Robison in trying to strengthen the national defense by utilizing the naval oil reserve

was less vigilant than he intended to be. I feel confident that if, at the time the award of the April 25th contract was made, he had known or appreciated the real value and significance of the preferential right to further oil leases that was vested in the Pan American Petroleum and Transport Company by the contract of April 25, 1922, and which was later by the contract of December 11, 1922, and the lease of June 5, 1922, and the lease of December 11, 1922, ripened into control of nearly all of naval reserve No. 1, that he never would have consented to that contract being made and never would have advised Secretary Denby to sign it. This is borne out by his testimony relative to the matter. He was detailing what occurred when the December 11th contracts were finally agreed to, and when he was trying to get higher royalties for the Government than Mr. Doheny would agree to pay. He testified:

“Q. You knew, though, that before you threw it upon to public bidding you had to submit it to Mr. Doheny’s concern? A. Yes.

Q. And you also knew that he was to have equal rights with any bidder if it was thrown open? [837] A. Yes.

Q. You therefore knew, in effect, that you would destroy competition, did you not?

A. I did not know it then.

Q. But you do now?

A. The preferential right had a great deal more value than I suspected at the time.”

“Q. Admiral, you were very anxious to get better royalties there, weren’t you? A. Why, yes.

Q. Did you discuss with Secretary Fall the question that you could say to Mr. Doheny that you would lay down to him certain royalties under his preferential right and if he refused then you could turn around and advertise? A. No, I did not.

Q. Why?

A. Because that is the time when that preferential right got its value to the Pan American Company. I didn't realize that it would be possible to do other than—we could break off negotiations with these people and then advertise, but I didn't believe it would be possible to obtain from any other concern royalties that would compare with those that we could get from the concern that already was in the area."

• • • • •
"Q. And it was determined that advertising should not be done?

A. Yes. As I say, that is where the value came to the Pan American Company in bid 'B.' I think at that time I made a mistake in the value to them of that preferential right. It was of real value to them, though, then."

There is another reason, in my opinion, why the contracts and leases should be voided because of personal and private transactions and relations between Secretary Fall and Mr. Doheny during the course of the negotiations for such contracts and leases. It appears that there was an understanding that Secretary Fall would later enter the employ of Mr. Doheny or of his companies and that he might repay and liquidate his indebtedness on ac-

count of the \$100,000 transaction out of the salary which he would then receive for such anticipated and future services. That such an understanding was contemplated and existed is shown by Mr. Doheny's testimony before the Senate investigating committee, in part as follows:

"Mr. DOHENY.—Well, I will tell you frankly now—I don't know whether this has any connection whatever with the investigation—but I expected that if the Senator did not sell or turn over that land that later on I might employ him in connection [838] with our affairs in Mexico, with which he is very conversant, and I would pay him a salary large enough of which he could pay about one-half to apply on the note, and pay it off in five or six years. And that was my expectation.

"The CHAIRMAN.—You had that in mind at that time?

"Mr. DOHENY.—Yes, sir.

"The CHAIRMAN.—If Mr. Fall does not enter your employ do you ever expect to press him for payment of the note?

"Mr. DOHENY.—Well, I don't know. If Mr. Fall is well enough and in good health I expect he will enter my employ.

"The CHAIRMAN.—You do expect that?

"Mr. DOHENY.—Yes, sir."

• • • • •
"Senator PITTMAN.—You did not expect him to go into your employ while he was Secretary of the Interior, did you?

"Mr. DOHENY.—No, sir.

"Senator PITTMAN.—You were to employ him after he ceased to be Secretary?

"Mr. DOHENY.—After he ceased to be Secretary of the Interior.

"Senator PITTMAN.—Was there anything said with regard to him resigning as Secretary of the Interior before his term was up?

"Mr. DOHENY.—Yes, sir; he often spoke of that. He often said he was not going to remain very long.

"Senator PITTMAN.—Well, you had in mind employing him and his repaying this note out of his employment?

"Mr. DOHENY.—Yes, sir.

"Senator PITTMAN.—And he had talked to you about resigning from the job of Secretary of the Interior?

"Mr. DOHENY.—Yes, sir; but I did not know how soon he would retire, whether he would stay his term out or not. We never discussed the length of time that he would remain in the Interior Department."

This is another incident so indicative of improper influence as to characterize the public contracts in controversy as tainted with fraud regardless of the intentions of Fall and Doheny with respect to this anticipated and contemplated future employment. The fact that it occurred during the negotiations of the contracts involved in this suit, when considered in connection with the other facts and circumstances in proof, and particularly the \$100,000 transaction,

so taints and contaminates such contracts as to require a court of equity to set them aside.

The actual effect of the contract of April 25th and the valuable preferential [839] right which it conferred upon the Pan American Petroleum and Transport Company was to utterly destroy competition for any oil leases in naval reserve No. 1. It is true that for this concession to the Pan American Petroleum and Transport Company the Government saved approximately \$500,000 in the Pearl Harbor project. But the destruction and prevention of competition in a public matter of such gigantic proportions as leases to more than 30,000 acres of proven oil bearing land which represent a potential profit to a lessee of \$100,000,000 cannot be justified under the facts and circumstances shown by the evidence in this case. It is contended by defendants that the contracts and leases in controversy were fairly obtained by competitive bidding. The evidence does not sustain this claim.

Aside and apart from the question as to whether the contracts and leases in question could be lawfully made without competitive bidding, the manner in which the bidding upon the April 25th contract was conducted as well as the way in which the agreements were negotiated and executed manifests in my opinion a determined purpose on the part of Secretary Fall to favor the companies controlled by Mr. Doheny to the prejudice of other prospective, available and actual bidders. There is official conduct and correspondence of Secretary Fall which indicates that in making the contracts for the con-

struction of the Pearl Harbor project and in leasing the naval oil reserves to the defendants he never intended that these matters should be effected by genuine competition. It is neither improbable nor unreasonable to infer that Secretary Fall, when the letter of November 28, 1921, was received, had concluded to lease the entire unleased areas in reserve No. 1 to Mr. Doheny's enterprises.

After Secretary Fall and Mr. Doheny had tacitly agreed upon the Pearl Harbor contract, as shown by the November 28, 1921, letter, a form of competitive bidding was inaugurated and pursued by the Interior Department relative to said contract. But it had no substance. It was feigned and illusory. It was discriminatory, deceptive and unequal. Responsible concerns that desired to bid were without good reason not permitted to do so. Public officers and citizens who sought information relative to matters in contemplation by the Interior Department were designedly misinformed. Secrecy was observed and maintained throughout the negotiations [840] under a pretense of emergency war plans. Information, opportunities and advantages were given to officers of the Pan American Petroleum and Transport Company that were not accorded to any other bidder.

The interior and Navy Departments considered competitive bidding to be necessary in order to make the contract of April 25, and having so concluded they were required to invite real competition. It should have been invited upon common ground. There is no competition unless the bidding is done

upon the same basis. The bidders must each and all be given the same information. There must be no discrimination or partiality. And wherever in invitations to bidders it is stated that the bidders may propose alternative bids the alternatives that will be considered should be defined so that the bidders may understand them and so that upon the submission of several alternative bids by different bidders a comparison of their relative merits and values can be made. If the form of the alternatives suggested to the bidders is such that alternative bids submitted under the invitation are incapable of a fair comparison the bidding is noncompetitive.

United States vs. Ellicott, 223 U. S. 524;

Inge vs. Mobile, 135 Alabama, 187;

Shaw vs. Trenton, 49 N. J. L. 339;

Tice vs. Longbranch, 119 Atlantic, 25.

Invitations to bid on the original Pearl Harbor project were sent out by the Interior Department in February, 1922, to five principal oil companies operating on the Pacific Coast. After they were sent out certain high naval officers objected to them on the ground that they called for the doing of the work at Pearl Harbor by the contractor on a cost-plus percentage or fixed fee basis. The Interior Department recognized the force of their objection and modified the invitations so as to call for bids wherein the contractor agreed to do the work on a lump sum basis and the first invitations were recalled. On March 7, 1922, second invitations were sent to the same five companies inviting alternative bids on two propositions. The bidders were invited

to submit on the construction feature of the proposed contract either a lump sum bid for the whole or a bid based on firm lump sum subcontracts for at least two-thirds of the work and some other supplementary bid for the remainder. These invitations permitted the bidder to submit on the fuel oil feature of the proposed contract either a bid stated in a ratio of barrels of fuel oil for barrels of royalty crude oil, or to state the relation in other terms. These permitted alternatives implied nothing concerning proposed leases or preferential rights to lease. [841] They concerned only construction features or exchange of oil relative thereto. There was no suggestion, intimation or inference deducible from the invitations to bid that the Government would consider or intended to grant additional oil leases in the naval reserves or a preferential right to any additional oil leases therein which the Government might thereafter determine to grant.

Before any of the invitations to bid were sent out and in January, 1922, Dr. Bain made a tour of California to consult and confer with officials of the oil companies that were to be invited to bid on the proposed contract for the Pearl Harbor project. Before he left Washington he knew that the Pan American Petroleum and Transport Company would bid on the project and there is strong reason to infer from the evidence that before reaching California he knew what its bid would be. It is certain that at such time he had been apprised of Mr. Doheny's early promise to bid on the construction without profit to his company.

On the train across the continent Dr. Bain was accompanied by Mr. Cotter, whom the evidence in this case shows was an attorney at law and the officer of the Pan American Petroleum and Transport Company who had more to do with the negotiations and making of the contracts in question than any other agent of the defendants with the exception of Mr. Doheny. Mr. Cotter had been employed in the Department of the Interior prior to his association with the defendant companies. He and Dr. Bain were friends and had been former associates in the Interior Department. Mr. Cotter was private secretary to Secretary of the Interior Lane and Dr. Bain during Secretary Lane's administration was Assistant Director of the Bureau of Mines in the Interior Department. Dr. Bain and Mr. Cotter were both westward bound on the same train and concerning the same enterprise. En route Dr. Bain stopped off at Three Rivers, New Mexico. He was met at the depot by Secretary Fall. Mr. Cotter merely stepped off the train to greet Secretary Fall at the station and continued on to Los Angeles by the same train. Dr. Bain stayed over night at Secretary Fall's ranch and went over the entire Pearl Harbor project with Secretary Fall, informing him of the status and developments relative thereto since Secretary Fall left Washington about December 1, 1921, and of his (Dr. Bain's) mission to the Pacific Coast. He secured Secretary Fall's approval to all that had been done up to that time and Secretary Fall authorized

him to continue with the negotiations "subject to the working out of a contract." Secretary Fall was careful throughout to [842] restrict the authority of his subordinates so that they could not finally conclude a contract without his personal approval.

Dr. Bain resumed his westward journey the day after his conference with Secretary Fall and reached Los Angeles January 2, 1922. Upon arrival he was met at the depot by Mr. Cotter, and the two men were later joined by Mr. J. Crampton Anderson, another vice-president of the Pan American Petroleum and Transport Company. The three men spent the day together. On the following morning Dr. Bain met Mr. Doheny, Mr. Cotter, Mr. Anderson, and other officers of the defendants in the offices of the company at Los Angeles. At this meeting Mr. Doheny repeated a statement he had previously made that his company would submit a bid in the matter of the Pearl Harbor project.

Before Dr. Bain left Washington, and of his own volition, he had requested Mr. Gano Dunn of the J. G. White Engineering Company of New York to make an offer to do the construction work of the Pearl Harbor project. And in a letter written by Mr. Dunn to the Bureau of Mines of the Interior Department on December 29, 1921, reference is not only made to the proposal of the White Company to do the work, but it is further stated that the White Company hope to amplify their proposal to suit any new condition which might be imposed as a result of Dr. Bain's visit to the Pacific Coast.

The proposed Pearl Harbor project was foreign to the ordinary and normal activities of a producing oil company. While the plan was to secure the construction of the Pearl Harbor project by the use of royalty oils coming to the Government from the naval oil reserves it also involved services that were essentially of an engineering nature. And neither the Pan American Petroleum and Transport Company nor any other commercial oil producing company was equipped and prepared to carry out the proposed contract in its entirety. The difficulties of this situation were met by teaming up the J. G. White Engineering Company with the Pan American Petroleum and Transport Company. This was accomplished through the agency of Dr. Bain, who upon his return to the east arranged a meeting between Mr. Dunn and other officers of the White Company with Mr. Doheny and other officers of the Pan American Petroleum and Transport Company with the result that a coalition was formed which made it possible and practicable for the Pan American Petroleum and Transport Company to obtain the contract of April 25, 1922, and the leases of the naval oil lands which were granted by the Interior [843] Department in order to effectuate said contract and the later one of December 11, 1922. Here was a situation which in and of itself gave to the Pan American Petroleum and Transport Company a distinct advantage over any other oil company or concern that might be interested in bidding on the Pearl Harbor project. The Company controlled by Mr. Doheny

was not only privileged in having the friendship and confidence of the Interior Department, but it was favored to the extent of constant and intimate conferences with the officers of the Interior and Navy Department which according to the evidence was not extended to the same degree to any other bidders.

The activities of Dr. Bain in California are illuminating in this case. He came apparently to submit the entire project to the principal oil companies operating in California oil fields in the vicinity of the naval petroleum reserves and to invite them to bid on equal terms on the Pearl Harbor project. After the conference with the officers of the Pan American Petroleum and Transport Company at Los Angeles he went to San Francisco where he interviewed officials of the following companies in the order named: The Standard Oil Company; Ford, Bacon and Davis, an engineering firm that had much business in connection with the Standard Oil Company; the General Petroleum Company; the Associated Oil Company; and the Pacific Oil Company. The result of such conferences may be summarized as follows:

The Standard Oil Company stated that they would not be interested in the construction part of the contract as their attorney had advised them that there was no legal power under the Act of June 4, 1920, for the Government to make the contract in the manner proposed.

The General Petroleum Company went even further and stated that they would not submit any bid

in the matter as their attorney had advised against the legality of the proposed contract. They suggested, however, that an opinion on the legality of the contract be obtained from the Attorney General, and if he held that the Secretary of the Interior could legally enter into the arrangement the Company would then consider it.

The Associated and the Pacific Oil Companies, which are affiliated companies, [844] also came to the conclusion that the proposed contract was unauthorized by the Act of June 4, 1920, and stated they would bid only upon condition that Congress approved the proposed contract.

The Engineering firm referred to only expected to work conjointly with the Standard Oil Company and they made no statement that they would bid independently, and as will appear later this firm submitted no bid.

With this information Dr. Bain returned to Los Angeles, where he first interviewed officials of the Union Oil Company of California. The true situation respecting this company is uncertain on account of an irreconcilable conflict in the testimony of Dr. Bain and Admiral Robison relative thereto. Dr. Bain testified that he got the impression from the officers of the company with whom he conferred that they were not interested in the proposed contract and he therefore did not leave plans of the project with them and did not send to the company a written invitation to bid as he did to each of the other companies interviewed. Admiral Robison testified that Dr. Bain reported to him that the

Union Oil Company was anxious to bid and that the Government undoubtedly could get a bid from it if one was wanted, but that he (Dr. Bain) advised against it on account of the company being foreign owned. This company, however, did not bid, but when it learned that the contract of April 25th had been made it protested that it had not been given an opportunity to bid on the same.

The final interview that Dr. Bain had with any oil company on the Pacific Coast was a second conference with the officers of the Pan American Petroleum and Transport Company at Los Angeles when Mr. Doheny reiterated his promise and intention to make a bid on the contract. It thus appears that the first as well as the last company to be interviewed and consulted by Dr. Bain on his western trip was the Pan American Petroleum and Transport Company.

Upon Dr. Bain's return to Washington he reported the result of his trip to Secretary Fall and it must have been expected by Secretary Fall that there would be no real competition—indeed, it must have been known to him that there would be only one bidder who would unconditionally offer to do the work of the Pearl Harbor project in consideration of the royalty oil from the naval petroleum reserves and that it was the company owned in [845] large part and controlled by his friend and benefactor, Mr. Doheny. The only other concerns that were given plans of the Pearl Harbor project and asked to bid thereon were the Pittsburg-Des Moines Company, and the Foundation Company

of New York. Being unable to make any satisfactory arrangements to dispose of the royalty oil which was to be the consideration for the Pearl Harbor construction under the plan, these companies were never heard from in the matter.

I am strongly persuaded by the evidence in this case to believe that Secretary Fall never really intended that there should be competition in the plan that he had devised for leasing all of the naval oil reserves. In my opinion it was fear of opposition from naval officers and because Assistant Secretary Finney early in the negotiations of the April 25th contract insisted upon competitive bidding that Secretary Fall consented to even the semblance of competition which the record in this case shows. As early as October 25, 1921, Secretary Fall manifested opposition to public competition in the matter of the leases and [846] contracts in suit. For when the draft of a letter of that date, which has already been mentioned, was prepared by Admiral Robison in the Navy Department it contained a mandatory provision that the contracts and leases of the naval oil reserves should be let by competitive bidding. When this draft was discussed with him for his approval, Secretary Fall suggested that the words "or otherwise" should be added to a certain phrase in the draft which read as follows:

"That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition."

The suggestion was adopted by Secretary Denby on recommendation of Admiral Robison. It reveals the mind of Secretary Fall in the premises.

If there had been a sincere and real attempt to interest the leading commercial oil companies in the project to the end that they would on common ground compete with one another in bidding on the contract so that the Government would obtain the most advantageous and best bid, there would have been a desire and an eagerness to obtain an opinion from the Attorney General as to the legal right of the Government to make the contracts. Dr. Bain testified that he informed all of the companies interviewed by him that an opinion had been obtained from the Judge Advocate-General of the Navy and it is reasonable to infer that in his conferences with Secretary Fall on the way west he had told Secretary Fall of this opinion. Neither Secretary Fall nor any other officer of the Interior Department or Navy Department ever sought or obtained any opinion from the Attorney General or any other disinterested legal adviser of the Government as to whether the contract could be legally made, but instead Secretary Fall resorted to secrecy, misrepresentation and deception.

When Dr. Bain returned to Washington in January, 1922, he recognized the propriety and desirability of obtaining an opinion from the Solicitor of the Interior Department on the legality of the proposed Pearl [847] Harbor contract and he suggested by letter of January 25, 1922, to Acting Secretary Finney that such an opinion be obtained.

Apparently Dr. Bain not only did not feel justified in proceeding with the negotiations for the contract on the strength of the opinion of the Judge Advocate-General of the Navy but the position taken by the oil companies in California evidently persuaded him to request additional legal advice.

By this suggestion Dr. Bain appeared to be desirous of securing real competition to the end that the Government would get the best results obtainable. However, no further legal opinion was ever obtained.

Why Dr. Bain did not seek or suggest the Attorney General's opinion is difficult to understand and his testimony on this point does not clarify the matter. He was asked, why in view of the suggestions of the oil companies he did not request the Attorney General's opinion. And he answered, that he felt that if he asked for an opinion from the Attorney General's office he would not know what kind of a lawyer was going to pass on it, and,

"while they have some very excellent lawyers in the Department of Justice that when you ask for an opinion over there you don't know whether it will get to one of them or somebody who is thinking only of strictly technical legal matters and who gives you a highly technical legal opinion and who has no responsibility whatever for carrying out a thing or getting anything done or somebody who is merely interested in building up a good record for himself and never letting anything be done which might come back on him."

So it appears that notwithstanding Secretary Fall was told by Dr. Bain upon his return from the West of the objections of the oil companies to the making of a contract, ~~that via the attorneys for one of~~ the oil companies had submitted a written opinion opposing the legal right of the Government to make the contracts, and notwithstanding another counsel for another of the oil companies came to Washington and told Fall that he believed the contracts were unauthorized by law, in the face of all these circumstances and events, Secretary Fall remained adamant. This was a peculiar position for him to take if he was not trying to thwart competition and to favor his friend and benefactor Mr. Doheny. If the real purpose of Secretary Fall had been to obtain for the Navy as large royalties [848] and as favorable terms as possible it would have contributed greatly to the accomplishment of such purpose to have stimulated interest and competition among the various oil companies by assuring them by a legal opinion from the legal department of the Government, which was in no way connected with or directly interested in the success or failure of the Pearl Harbor project, that the contemplated contract could be lawfully made. The failure to adopt such a course is another badge of fraud and another of the many suspicious circumstances concerning Secretary Fall's activities in the matter of the contracts in controversy in this case.

An incident which illustrates Secretary Fall's eagerness to close the Pearl Harbor project contract, and another agreement by which he leased

naval petroleum reserve No. 3, in Wyoming, at the same time, occurred a few days before April 15, 1922, the day upon which the bids on the Pearl Harbor contract were to be opened, Secretary Fall was preparing to leave for a visit to his ranch in New Mexico and he asked Dr. Bain and Assistant Secretary Finney how the Pearl Harbor contract was getting along and when they told him that it was not possible to open the bids until April 15 he was disappointed and became impatient at the delay in the Pearl Harbor matter saying that he wished to close both matters together. At the same time he wrote a letter to Secretary Denby in which he stated that he was delaying the Pearl Harbor matter purposely in order that application might be made to have Congress pass some measure that would expressly authorize the exchange of royalty oil for storage and fuel oil.

There are many other circumstances and details connected with the so-called competitive bidding leading up to the contract of April 25th that are curious and suspicious. But this opinion would be too voluminous to mention them all. Suffice it to say that from all of the evidence relative thereto I am satisfied that there was no real competition between the bidders but that the competition was a sham and a pretense. [849]

The revelations at the opening of the bids in the Interior Department on April 15, 1922, substantiates the opinion that there had been no real competition and that precisely what must have been anticipated by Secretary Fall actually happened when

the bids were opened. There were three bids submitted. The Standard Oil Company submitted a bid on the Pearl Harbor project which excluded the construction work. The Associated Oil Company bid conditionally on the approval of the contract by the Congress. And the only other company to bid was the Pan American Petroleum and Transport Company which submitted two bids denominated "Proposal A" and "Proposal B" respectively. The former was in exact conformity to the invitation and involved a profit to the Pan American Company. The latter was for about \$235,000 less and contained a proffer to further credit the Government against the proposal sum for all savings which might be accomplished in the actual construction of the Pearl Harbor project. It was a bid to do the work at cost. In this respect it carried out the promise made by Mr. Doheny to Admiral Robison. It was conditioned however on the grant of a preferential right to all oil leases which might be thereafter made by the Government in naval petroleum reserve No. 1. In this respect it was in line with the understanding between Secretary Fall and Mr. Doheny in November, 1921, as to granting further leases to Mr. Doheny or to his companies in the reserves.

As previously stated herein there was nothing in the written invitations that were sent out to the various oil companies and others who were asked to bid to indicate that the Interior Department intended to or would consider a proposition of a preferential right to lease the naval oil reserves. And no

company other than the Pan American Petroleum and Transport Company apparently considered that a proposal embodying such preferential right would be entertained by the Interior Department or that such a proposition would be in accordance with the invitation to bid. No other company than the Pan American Petroleum and Transport Company had information such as was referred to in the letter of November 28, 1921. Secretary Fall had never told any other officer of any other oil company that he would or expected to grant further leases to oil [850] lands in connection with the Pearl Harbor construction.

It is suggested that "Proposal B" was conceived by Mr. Cotter. But Mr. Cotter was not called as a witness. It may have been that Mr. Cotter actually phrased "Proposal B," but it is also quite probable that he did so from information that he received from other officials of the Pan American Petroleum and Transport Company and from the letter of November 28, 1921, for Mr. Cotter was in the office of Secretary Fall on the day that Secretary Fall received the letter from Mr. Doheny, and it is a fair inference that Mr. Cotter had discussed with both men the matters that had occurred between Secretary Fall and Mr. Doheny relative to the Pearl Harbor Construction work and the granting of further leases in the naval reserves to pay for same.

None of the other companies, except possible the White Engineering Company that was collaborating with the Pan American Petroleum and Trans-

port Company, had been told of the understanding that Mr. Doheny and Secretary Fall had in October, 1921, that the Pan American Petroleum and Transport Company would bid on the Pearl Harbor construction at cost and without profit. And why competition was invited on a construction project that one prospective bidder had stated it would build at cost is difficult to understand.

The only contract in suit as to which there was any kind of competitive bidding was the Pearl Harbor construction contract of April 25, 1922. There was no bidding of any kind for either of the leases by which the Pan American Petroleum and Transport Company obtained dominion and control of about 32,000 acres of the richest oil lands of the naval reserves of the Nation. And there was no bidding competitive or otherwise for the contract of December 11, 1922.

As previously mentioned, one of the contentions of the defendants in this case is that even assuming that fraud and conspiracy have been proven the contracts cannot be annulled and cancelled because no pecuniary damage has been shown. While as I have said I do not agree with this contention, the way in which the so-called competitive bidding was carried on and the partiality that was exhibited in awarding the contracts furnish an [851] answer to this contention. For if all of the persons invited to bid had been told that one of the bidders had already agreed to do the construction work at Pearl Harbor at cost and without profit such information would probably have suggested to the bidders that

under the privilege of submitting alternative bids some matter concerning the leasing of lands in the reserves was contemplated by the Government and might be considered. And in such event all bidders would probably have submitted more attractive bids for the contract. It cannot be said therefore that if the bidding had been upon common grounds and had been really competitive the Government would not have received greater value for its oil and oil leases than it has under the contracts and leases in suit. Moreover, according to Mr. Doheny's testimony before the Senate Committee his companies expected to make a profit of \$100,000,000 from the contracts and leases in suit. If the various oil companies had known or realized what Mr. Doheny had been told by Secretary Fall it is more than probable that less profit would have satisfied them, which would of course have correspondingly increased the value that the Government would receive on account of the leases and contracts in question.

After the bids were opened on Saturday, April 15, 1922, at twelve o'clock noon, in the office of Assistant Secretary Finney of the Interior Department, they were turned over to Dr. Bain and Mr. A. W. Ambrose, Chief Technologist for the Bureau of Mines of the Interior Department. And on Monday, April 17, 1922, Mr. Ambrose filed a report and comparison of the bids with Acting Secretary Finney and recommended that the bid of the Pan American Petroleum and Transport Company, under "Proposal B," be accepted. for the reason that

it was the lowest bid submitted and that the Pan American Petroleum and Transport Company had drilled other leases in naval reserve No. 1 satisfactorily to the Department of the Interior and that by granting the preferential right as suggested in "Proposal B" the Department was certain of a direct saving of over \$235,000 and the possibility of a further saving. [852]

After the report was received Assistant Secretary Finney conferred with Admiral Robison and as a result wired to Secretary Fall, who was then at the ranch in New Mexico, recommending on behalf of himself, Mr. Ambrose and Admiral Robison acceptance of the Pan American Petroleum and Transport Company alternative bid under "Proposal B," Secretary Fall answered by stating that if Admiral Robison and the Secretary of the Navy concurred and authorized it to immediately award and close the contract with the Pan American Petroleum and Transport Company and to make public entire policy in fullest and completest manner. Thereupon Assistant Secretary Finney advised the Pan American Petroleum and Transport Company by letter of the acceptance of their "Proposal B," and awarded the contract to them thereon.

Prior to April 15th when the bids were opened Assistant Secretary Finney had never discussed with Secretary Fall or any other person the idea of granting a preferential right to further leases in the proposed Pearl Harbor contract. He knew nothing about the intention to grant such right. Neither did Admiral Robison.

Immediately after the letter of award was sent the Bureau of Mines in conjunction with the Navy Department began the preparation of a contract pursuant to the award. And during the conferences relative thereto between Assistant Secretary Finney, Mr. Ambrose, Admiral Robison and Mr. Cotter, Mr. Cotter brought up the question of the preferential right which was the condition of the bid of the Pan American Petroleum and Transport Company under "Proposal B." He wanted some definite assurance in writing that his company would receive an additional lease within one year to about 160 acres in one portion of reserve No. 1 and a strip of about 140 acres in another portion of the same reserve at royalties of from 12½% to 45%. Assistant Secretary Finney, Mr. Ambrose and Admiral Robison had agreed to give such leases if Secretary Fall approved thereof. There was no specific mention of this lease in the Pearl Harbor contract of April 25th, but on April 17th a letter was prepared by Assistant Secretary Finney bearing date April 25, 1922, which was signed by Assistant Secretary Finney and Secretary of the Navy Denby in which it was stated that [853] the Department of the Interior agreed to grant to the Pan American Petroleum and Transport Company within one year from the date of the delivery of the Pearl Harbor project contract the two leases requested by Mr. Cotter.

When this letter and the contract were drafted, and on April 20, 1922, Assistant Secretary Finney sent Mr. Ambrose to New Mexico with all of the

papers relative to the award and contract and instructed Ambrose to acquaint Secretary Fall with all of the details in the matter and to submit the same to Secretary Fall for his approval. Mr. Ambrose arrived at Three Rivers, New Mexico, on April 23d, and after submitting the entire matter to Secretary Fall, Secretary Fall sent a telegram to Assistant Secretary Finney authorizing the execution of both contract, that is, the Pearl Harbor project contract and the letter of agreement for further leases under the preferential right of the April 25th contract. And on April 25, 1922, Assistant Secretary Finney executed and signed the contract and delivered the letter agreeing to give the leases. Immediately thereafter the two documents were sent over to Secretary Denby and he signed the same.

Concerning the making of Secretary of the Navy Denby a party to this contract there is another significant circumstance. It was not the intention to have Secretary Denby sign the contract. Mr. Cotter however demanded that Secretary Denby be made a party to the contract and stated that it would not be acceptable to him unless Secretary Denby signed the contract. Assistant Secretary Finney and Dr. Bain would not assume authority to name Secretary Denby as one of the contracting parties but wired Secretary Fall of Mr. Cotter's demand and Secretary Fall authorized Secretary Denby's name to be inserted in the contract. It is apparent that Secretary Fall was the dominant and deciding agency in the making of these contracts by the Government. He did not personally

participate in all of the negotiations but he did retain the ultimate power that brought the contract and lease into being. He was the deciding official in making all of the contracts and leases. He and his department always fixed and determined the royalties in the leases.

The scope of the power asserted by the Secretary of the [854] Interior and reposed in him by this contract of April 25, 1922, is forcefully shown by a letter by Assistant Secretary Finney to Secretary Denby on May 5, 1922. After the contract was executed there was a discussion between Mr. Cotter, Admiral Robison, Assistant Secretary Finney, Mr. Dunn and others as to how the construction and other matters covered by the contract would be handled especially in the event of a dispute or disagreement between the contractors and the Navy or others. Mr. Dunn who was to do the construction work at Pearl Harbor under subcontracts with the Pan American Petroleum and Transport Company insisted that the final arbiter should be the Secretary of the Interior. It was so decided. Admiral Robison consented to such decision and thereupon the following letter was prepared and transmitted. It was received by Secretary Denby and approved by him as will appear by his endorsement. The letter reads:

“Department of the Interior,
Washington,

May 5, 1922.

The Secretary of the Navy.

Dear Mr. Secretary:

April 25, 1922, the Navy and Interior Departments entered into a contract with the Pan American Petroleum and Transport Co. for the exchange of crude oil for fuel oil in storage at Pearl Harbor. It is important that work under this contract begin at the earliest possible moment and that the method of procedure and supervision be agreed upon between the two departments. In that connection I submit for your consideration and approval, if you agree, the following:

Contract consists of two principal parts, the first is the exchange of crude oil for fuel oil to be delivered in tankers at Pearl Harbor. The second part is the construction of oil storage and the receiving of oil in the tanks at Pearl Harbor.

The Department of the Interior shall retain direct control of the oil business involved in this contract; in other words, of the first part of the contract mentioned above.

The Chief of the Bureau of Yards and Docks, Navy Department, Admiral L. E. Gregory, is designated as the representative of the Secretary of the Interior in handling the second part of the contract as noted above. This involves, first, all technical matters in connection with the plans and specifications for storage, and which in its general phases can be most expeditiously handled in Washington;

second, the supervision of construction work in the field at Pearl Harbor; and third, the receiving of the oil at Pearl Harbor from the tankers and placing same in tank storage as it becomes available under this contract until such time as the completed plant shall be turned over to the Government.

The Secretary of the Interior expressly reserves at all times the right to recall the foregoing representation and to designate a successor from the Navy Department as his representative. The right of the contractor to appeal to the Secretary of the Interior, as provided in the contract, is not affected hereby. Notice of any appeal by the contractor from [855] the decision of the officer in charge of the work and the reasons therefor shall be forwarded promptly, being routed through the commandant and the Chief of the Bureau of Yards and Docks on their way to the Secretary of the Interior. This will in no way involve the functions at present exercised by the Chief of the Bureau of Engineering in dealing with the Secretary of the Interior in regard to oil matters in general, since the only function of the representative of the Secretary of the Interior would be the technical work of constructing the tanks, the receiving and storing of the oil during construction, and reporting to the Secretary of the Interior, the amounts received.

Respectfully,
EDWARD C. FINNEY,
Acting Secretary.

Approved:

EDWIN DENBY,
Secretary of the Navy."

It is very doubtful whether Secretary Denby was cognizant of the terms of the contracts. It is certain that he was induced to sign them under a misapprehension. He relied entirely upon Admiral Robison for information concerning the contracts and leases and it is shown that he signed them under the belief that they were necessary as protective measures against drainage on the reserves. Secretary Denby had always taken the position that as much of the oil as possible should be kept in the ground. The contracts and leases in suit were not necessary as drainage protections and were not so intended by either Admiral Robison or Secretary Fall. The contract of April 25th was simply a contract for the use of royalty oil in payment for a large construction job at Pearl Harbor and the filling of tanks therein with fuel oil. At the time it was in contemplation the Government was receiving royalty oil from certain leases in the reserves and the Navy desired to use such royalty oil for the construction instead of selling the oil and paying the proceeds into the treasury as required by previously existing law. There was no thought at the time of making further leases on the reserves except for the one purpose of providing additional royalty oils with which to pay for the construction at Pearl Harbor. However, whatever protection to the reserves was deemed necessary had been carried out by the strip leases that were made before the contract of April 25th had been executed. And a further protection to the reserves [856] against drainage was established by the temporary reserve

agreement with the Pacific Oil Company which was made in February, 1922, by which that company which owned oil lands adjacent to the reserves agreed with the Government to forego further drilling except on six months' notice. So that neither the Navy officer in charge nor the Interior Department had any thought that the Pearl Harbor project or the granting of additional leases in connection therewith had anything to do with the drainage question on the naval reserves.

The Pan American Petroleum and Transport Company was not required to wait long for an additional lease under their preferential right and under their letter of April 25, 1922. On May 19, 1922, by Mr. Cotter, the Company applied for a lease and it was granted the lease of June 5, 1922. No other person, firm or corporation was advised of the Government's intention to make this lease. It was made secretly and without competitive bidding of any kind.

There is a circumstance in connection with the letter of April 25, 1922, which granted the lease of date June 5, 1922, to the Pan American Petroleum and Transport Company, that shows the tendency to favor the company controlled by Mr. Doheny whenever an opportunity came. This letter bears date after the award of the contract of April 25th had been made to the Pan American Petroleum and Transport Company under their "Proposal B" bid. The award of the contract was made April 18, 1922. As far as an enforceable contract to do the Pearl Harbor work is concerned, one had therefore been

accomplished on April 18th by the United States with the Pan American Petroleum and Transport Company. The consideration had been stated and agreed to. It was unnecessary to give any specific leases to oil lands in the reserves. Mr. Cotter, however, speaking for his company, insisted that the preferential right which was given by the April 25th contract should be immediately transformed from a contingent and inchoate right into a vested one and his request was acceded to without delay by Secretary Fall. This was another positive and unmistakable manifestation [857] that the Pan American Petroleum and Transport Company was less interested in the Pearl Harbor contract and the existing royalty oil from the reserves than with the immediate grant of further valuable leases in the reserves to themselves without competition and through favoritism and discrimination. The Pearl Harbor contract was of no value and of little interest to the Pan American Petroleum and Transport Company without the preferential right. It was the preferential right that had real commercial value. It cannot be said with any degree of reasonable probability that Secretary Fall's approval of this grant of the June 5th lease and of the later lease of December 11, 1922, were not to some extent influenced by Mr. Doheny's personal benefactions to him. Favoritism, partiality and discrimination in administering public duties and in reposing valuable public rights in private concerns are often as destructive to governmental integrity and national

welfare as bribery. Public office is yet a public trust wherein all the people are the beneficiaries.

After the contract of April 25th was made Dr. Bain visited California in May, 1922, for the purpose of arranging for the turning over to the Pan American Petroleum and Transport Company the accumulated oil that had been collected from the reserves during the negotiations that lead up to the April 25th contract. He encountered serious opposition by the oil companies that had been receiving the oil under earlier arrangements and the companies were threatening litigation to test the validity of the April 25th contract. In this dilemma he prepared a letter to Secretary Fall, as follows:

"506 Custom House,
San Francisco, Calif., May 12, 1922.

Hon. Albert B. Fall,
Three Rivers, N. Mex.

Dear Mr. Secretary:

I have been here for the last few days arranging for a transfer of the accumulated royalty oil and future royalty [858] oils to the Pan American Company. I have been surprised to find that the Standard and General Petroleum in particular are adopting a very technical attitude toward the transfer, going so far as to raise a question as to whether either company would be safe in making such a transfer or in later handling any of the oil in case the Pan American desired to have them do so. As you will recall Mr. Sutro and Mr. Wyle have been doubtful as to the right of the department to make the exchange contract. They now seem to have

become positive that no such right exists and Mr. Story is even interpreting the law so far as to question the right of the Standard to deliver oil to the Pan American on our order. I have arranged that Mr. Campbell, as representing the department, shall receive the oil and give a receipt for it, and while I am not a lawyer, my impression is that that should end the matter as far as the pipe line companies are concerned. Of course, this is not a matter which primarily concerns the department since we have all been entirely clear in our minds as to the right of the Government to make this exchange and have in fact gone ahead and contracted for the exchange with the Pan American, and the latter is an entirely responsible concern that I assume ends it as far as we are concerned.

There is, however, another phase of it. None of us want Mr. Doheny to get into trouble, and I take it we will want to do anything we can to make it easy for him. I have been told that there was a definite proposal to have one of the smaller companies go into court and fight this contract with a view to getting a decision as to the right of the department to make such a bargain. This proposal was not carried through. Mr. Storey tells me that he objected to it, as he felt that it would embarrass the department and would give support to the trouble makers in Congress. He professed to be anxious and willing to do anything he can help the department to carry out its plans, but to be in the awkward position of having an opinion from his

attorney which might be quoted against him in case the matter ever came up.

Out of all this has come the suggestion repeatedly that the opinion of the Attorney General be obtained as to the legality of the contract. I realize the objections to asking such an opinion, but I have thought it proper to let you know the difficulties that are being raised here so that you might reconsider the matter and decide as to whether you might not properly ask the Attorney General to put in writing what I have understood was his informal and verbal expression of opinion favorable to the action the department has taken. I am not certain that Mr. Doheny cares, but Mr. Cotter will see him tomorrow, and if it does not seem to them important I am giving Mr. Cotter this letter to show you, so that you may know what I have found out here.

The wells on the north line of 2 are coming in in good shape, and Anderson has done excellent work in pushing them ahead.

I am sorry to bother you with this business while you are at home.

Cordially yours,

H. FOSTER BAIN,

Director.

cc Mr. A. W. Ambrose."

Dr. Bain did not mail this letter but gave it to Mr. Cotter who was also in California. And although Mr. Cotter did not testify it appears that the letter never reached Secretary Fall, as Mr. Cotter [859] told Dr. Bain afterward that he had talked the matter over with Mr. Doheny and that

Mr. Doheny said that the matter was unimportant and that he was satisfied with the authority to go ahead. Here is a clear and unmistakable manifestation on the part of Mr. Doheny that he was determined to retain this valuable and unusual leasehold right to the naval oil reserves and that he was not willing to hazard the venture by any litigation or by even the solicitation of an opinion from the Attorney General as to the legality of the contract. This situation alone, in my opinion, negatives the idea which counsel for defendants suggested that Mr. Doheny's interest in this matter was primarily patriotic. Mr. Doheny by this position showed that in May, 1922, at least, he was looking forward and anticipating the valuable and extensive lease that he later obtained on December 11, 1922. The contract of April 25, 1922, meant no profit to him. The lease of June 5th was not valuable. It was small in area and was coexistent with the April 25th contract. It was the preferential right to further leases granted by the April 25th contract that Mr. Doheny expected would fructify into a valuable property right. He was not desirous or willing to risk what he knew the future would bring to him because of his ownership of the preferential right. If the contract which gave him that right would not stand the legal test he would be unable to effectuate any plans for the future. And he wisely decided to let well enough alone as to the legality of the April 25th contract.

There were some other details in connection with the contract of April 25, 1922, and the lease of June

5, 1922, that are significant in the consideration of the first general contention of the plaintiff in this case and they have been covered by the findings of fact and conclusions of law filed simultaneously with this opinion. Further mention herein I deem unnecessary.

We are therefore brought to a consideration of the contract and lease of December 11, 1922. I shall not review much of the record relative to the execution of these agreements. They are inextricably bound to the April 25th contract and all of the agreements are component parts of a plan to lease the naval oil reserves and to use the royalty [860] oil coming to the United States therefrom. If the plan was tainted by the personal and money transactions of Secretary Fall and Mr. Doheny all of its parts are infected.

No competition of any kind was attempted by any department of the Government with respect to the agreements of December 11th. There was no immediate drainage condition that justified them. The only officer of the Government who participated in the making of the contract or lease under the theory that it was a present drainage relief measure was Secretary Denby, and he was mislead in this regard. There was secrecy in the negotiations that lead up to the execution of these agreements and in the actual consummation of them. The royalties that were to be required to be paid to the Government under the lease were not as favorable to the Government as those which had been obtained for leases on reserve No. 2 about this same period. The con-

tract and lease cannot be justified upon any national emergency demand, for there is no evidence that any existed at the time these agreements were made. These contracts, in my opinion, were in furtherance of the plan of Secretary Fall, formed by him soon after he assumed the Interior portfolio, to lease the entire naval reserves of the Nation to private enterprise. They were also to effectuate the understanding which I believe the telling letter of November 28, 1921, shows existed between Secretary Fall and Mr. Doheny to grant privileged leases to the defendant companies.

Shortly after the April 25th contract was made Admiral Robison called the attention of the officers of the Navy to the desirability of increasing the Pearl Harbor reserve fuel station and also of the necessity of increasing the reserve stocks of fuel oils and lubricating oils together with the necessary storage facilities therefor. Little attention was paid to his suggestion at that time. He however was determined to accomplish his incessant desire to strengthen the Nation's defense by building and equipping additional fuel stations by using naval oil therefor. And again on November 20th, [861] 1922, he wrote to the Bureau of the Navy that had direct supervision of such matters, as follows:

"The storage for 1,500,000 barrels of fuel oil at Pearl Harbor under contract with the Pan American Petroleum and Transport Company is nearing completion and it is desirable at this time that information be at hand as to what further disposition should be made of the

royalty oil accruing from Naval Petroleum Reserves Nos. 1 and 2."

On the following day Admiral Robison received authority to proceed with the enlargement of the Pearl Harbor project so as to provide additional fuel oil storage facilities and also a separate unit for gasoline storage.

In the meantime the Interior Department had been solicited by the Pan American Petroleum and Transport Company to extend some relief from their leases in the naval oil reserves on account of the flush production of crude oil occasioned by the opening up of newly discovered fields in California and insufficient refinery facilities therein which had resulted in greatly depreciating the market price of oil. On July 28, 1922, Mr. Cotter wrote to the Secretary of the Interior requesting that his company be permitted to curtail production and cease drilling. He suggested that his company hoped to be able to submit a plan to the Secretary of the Interior to bring better prices for the oil. There are two important features of this letter shown by the following excerpts:

"We are seriously contemplating the adoption of a plan which should bring better prices for this oil, if and when the plan can be consummated. In order that this plan may be developed, it is essential that we should have immediately your consent for suspension of operations, both drilling and pumping, on lands which we have leased from both within and without the Naval Reserves.

This suspension of operations may be made to such an extent as not to include off-set wells, but license to make it complete is necessary in order that development of the contemplated plan may be attempted."

"We believe that if this oil can be safely stored underground, that better prices which the future should develop will result and bring out the liquidation of contract prices in approximately the same length of time with a much smaller quantity of oil.

We hope that you will see your way clear to authorize us to suspend operations both of drilling or production, or either, to such extent as we may find it necessary in connection with the study of our proposed plan, until such time as said plan can be fully developed and submitted to you for your study and [862] approval. We hope to be able to submit this plan within ninety days.

To enable us to commence the initiation of the plan which we have in mind and to avoid the menace of possible failure to fulfill our leases, specific telegraphic authority to discontinue operations, followed by a mail confirmation, is hereby earnestly requested."

This request was immediately granted by Secretary Fall.

The prevailing market conditions made increased drilling in the naval oil reserve unnecessary.

The program of commercial oil companies was to curtail production as far as possible and thus relieve the unsatisfactory market condition so that a reasonable market price could be re-established. It is also clear that the Navy's policy of keeping the oil underground was particularly helpful to the general market condition that prevailed during the summer of 1922. These unsatisfactory market and inadequate refinery conditions afforded further opportunity to favor the Pan American Petroleum and Transport Company by putting into operation its preferential right to oil leases in the naval reserves so that the Pan American Petroleum and Transport Company might carry out its plan to establish a California refinery. If additional refinery facilities could be provided the over-production of crude oil could be transformed into other petroleum products and the general market condition stabilized. As it was however there was neither excuse nor justification for putting into operation the valuable preferential right granted by the April 25th contract so that an enlarged or modified plan had to be brought forward in order to attain the end agreed upon between Mr. Doheny and Secretary Fall as early as November 28, 1921.

Shortly after Mr. Cotter's letter of July 28th Mr. Doheny returned from a summer outing in Alaska and on September 6th he wrote a very friendly letter to Secretary Fall in which he made the following statements:

"I am greatly pleased to note that the authority which you gave to your representative at Bakersfield, Mr. Campbell, has worked out some good results in connection with the temporary [863] flood of oil which has increased the production beyond the capacity of the refineries in this State. The need for storing this surplus is undoubtedly the cause of the decrease in the price of oil, inasmuch as oil purchased in excess of the capacity of the refinery must be stored by the purchaser at a cost of 35¢ to 50¢ per barrel over the cost of such oil as may be treated immediately and find its way into the market.

In connection with this situation I have developed some ideas which I desire to place before you, which I think will work out to the advantage of the Government and the oil producers, generally, in this State. I am preparing a statement of the situation here and of the plan which I would like, under certain conditions, to undertake to carry out, which will give relief of a substantial character and provide additional market for the flush, unrestricted production of the oilfields here."

When Mr. Doheny and Secretary Fall met and discussed the plan mentioned by Mr. Doheny is not disclosed by the record in this case. There is nothing from which it is possible to fix definitely the time of any discussion between them concerning this new plan. It is certain, however,

that they did discuss the matter and probably before it was discussed by any other persons concerned. Mr. Doheny arrived in the east shortly after the letter was written, and in the latter part of October, 1922, he also called upon Admiral Robison to whom he disclosed the plan and with whom he discussed it on at least two different occasions before the contract of December 11, 1922, was made.

In substance his plan as imparted to Secretary Fall and Admiral Robison was to increase the storage facilities at Pearl Harbor and to provide for additional oil storage facilities for the Navy elsewhere of from two to five million barrels and to fill the same with fuel oil as a reserve in addition to furnish and sell to the Navy manufactured oil products from the refinery at ten per cent less than market prices at tidewater. The plan further provided that the Pan American Petroleum and Transport Company would erect an oil refinery at San Pedro, or at some other tidewater point, in California, and construct a pipe-line from the naval oil reserves in California to the refinery and convey the oil from the reserves through the same, and that in consideration of these undertakings the Government would, under the preferential right to lease granted under the April 25th contract, immediately lease to the Pan American Petroleum Company all of the unleased portions of [864] naval reserve No. 1, excepting a certain area upon which no leases would be granted to any concern, and would

authorize immediate extensive and general drilling thereon. The agreement proposed was to continue for fifteen years after the completion of the Pearl Harbor construction. It was in effect a complete surrender and transfer of approximately 30,000 acres of valuable proven oil land and its oil contents, estimated at from 75,000,000 to 250,000,000 barrels of oil, for fifteen years at least. Some idea of the value of this concession, granted secretly, privately and without a semblance of competition, is obtained from Mr. Doheny's testimony before the Senate committee that he expected his companies to make a profit of \$100,000,000 from it.

As a result of Mr. Doheny's conversations with Admiral Robison the plan was discussed by officers of the Navy and Interior Departments and a contract embodying the terms of the contract of December 11, 1922, was agreed upon, and it was also agreed that a lease such as that proposed would be granted to the Pan American Petroleum Company in accordance with the contract. This lease was made on the same day as the contract. Although this contract for additional storage facilities for nearly one and one-half million barrels of oil at Pearl Harbor was entered into on December 11, 1922, the plans for such additional construction were not prepared until long after that date. There seems to have been unnecessary alacrity in effectuating the contract and lease of December 11, 1922.

The negotiations were proceeding smoothly after the conferences between Admiral Robison and Mr. Doheny when a barrier confronted consummation of the plan in the formal execution of the contract and lease contemplated. This obstacle was the all-important question as to what royalties would be paid by the Pan American Petroleum Company under the lease. Admiral Robison insisted upon a higher royalty than the officers of the Pan American Companies would agree to pay. And in this situation Dr. Bain prepared a compromise schedule of royalties which were not as high as those demanded by Admiral Robison nor as low as those contended for by Mr. Doheny. Dr. Bain's schedule was taken to Secretary Fall and Secretary Fall was advised as to the difficulty that existed. He personally [865] got in touch with Mr. Doheny and submitted the compromise proposition to him, and while unable to obtain Mr. Doheny's consent to Admiral Robison's royalties he did secure Mr. Doheny's acquiescence in Dr. Bain's compromise schedule of royalties. We have no way of knowing the conversations that occurred between Secretary Fall and Mr. Doheny with respect to this controversy but we do know that Secretary Fall informed Admiral Robison that he had discussed the matter with Mr. Doheny and had submitted Dr. Bain's compromise schedule and had obtained Mr. Doheny's consent thereto.

Admiral Robison, however, was not ready to agree to accept the royalties which were tentatively

agreed to by Secretary Fall and Mr. Doheny, and a meeting between Admiral Robison and Mr. Doheny took place, wherein Mr. Doheny with some chagrin stated that he would not agree to any higher royalties than those suggested by Secretary Fall. And Admiral Robison, fearful that the entire plan would miscarry, finally agreed to accept the royalties that were satisfactory to Mr. Doheny. And these are the royalties specified in the lease of December 11, 1922. It is the royalties specified in this lease that determine the value of the lease and of the companion contract of December 11th to the defendants and it was Secretary Fall who finally decided and actually fixed the royalties therein. Secretary Denby personally took no part in the negotiations and never read the contract thoroughly. He relied entirely upon Admiral Robison. He had never met Mr. Doheny until the time that he signed the contract on December 11, 1922, when Admiral Robison introduced Mr. Doheny to him.

This lease assured the defendants a sufficient supply of oil to enable them to enter the refinery business in California.

The contract and lease of December 11, 1922, were made, as far as Admiral Robison was concerned, to extend his desire to strengthen the national defense by utilizing oil from the naval reserves, and on the part of Secretary Fall and Mr. Doheny they [866] were made to effectuate the preferential right given to the Pan American Petroleum and Transport Company by the contract

of April 25, 1922, and to enable that company to obtain control of practically all of naval petroleum reserve No. 1. The motive and plan of Secretary Fall concerning the lease of December 11, 1922, is illuminated by his correspondence with citizens and concerns who were anxious to know whether it was his policy to grant leases in the reserves. Many of these persons wrote to him during the year 1922, and as late as the latter part of October therein, and requested information as to whether it was possible to obtain oil leases in the naval oil reserves. To all of these inquiries he stated that the policy of the Interior Department was to grant no leases in the reserves except such as were absolutely necessary in order to protect the reserve from drainage by outside drillings. These statements were certainly not in accord with the truth. He was at this time considering leasing the entire reserve No. 1 to the Pan American Petroleum and Transport Company and the contemplated lease had no drainage aspect.

To sustain these contracts and leases in view of the multitude of irregularities, favoritisms, discriminations, improprieties and wrongs shown by the record in this case is more than this court can do. Some of the specific means alleged to have been employed by Secretary Fall and Mr. Doheny to consummate the conspiracy have not been proven by the evidence in this case, but in general the allegations of fraud and conspiracy have been established. In my opinion it has been clearly proven that as early as November 28, 1921, there was a

secret definite understanding, arrangement and agreement between Secretary Fall and Mr. Doheny that the companies controlled by Mr. Doheny would be given extensive and valuable oil leases in the naval petroleum reserves in the consideration of the building of the storage facilities at Pearl Harbor, Hawaii, and the filling of the same with fuel oil, and that all of the contracts and leases in controversy in this suit were and are the outgrowth, development and accomplishment of such secret plan.

My conclusion upon the issue of fraud and conspiracy is that the charge thereof alleged in the amended bill of complaint has been sustained and that the contracts and leases involved in this controversy must be cancelled, annulled and set aside. [867]

I now consider the second ground of attack against the contracts and leases in suit. The allegations of the amended bill of complaint in so far as this second ground of attack is concerned are, generally, that the contracts of April 25, 1922, and December 11, 1922, and the leases of June 5, 1922, and December 11, 1922, respectively, were made without any legal authorization therefor, that is to say, that there was no law of the United States which authorized any officer of the United States to enter into any such contracts or leases so as to make them or any of them binding *an* enforceable obligations of the United States, and consequently that they are and each of them is absolutely void and of no legal force or effect what-

ever. In discussing this phase of the case it will be assumed that the official authorized by the wording of the Act of June 4, 1920 (41 Stat. 812), actually made the contracts and leases notwithstanding this Court has determined that such was not the fact. It is the legal power of the Secretary of the Navy under the Act of June 4, 1920, that is to be considered and in the consideration of it it will be assumed that the Secretary of the Navy in fact exercised such power.

The precise question for decision is whether any law of the United States authorizes the officers of the Government of the United States to exchange royalty crude oil and gas due to the United States from oil and gas leases on lands within the naval petroleum reserve for fuel oil for naval use and for the storage facilities in which to contain and reserve such fuel oil for use by the Navy. If it be determined that there exists any law empowering the Government to accomplish such an exchange generally, the next and ultimate question is whether the particular contracts and leases in controversy in this case are valid and enforceable executions of such power.

The validity of the agreements in suit rests entirely upon the scope, terms and effect of four provisos annexed to the Naval Appropriation Act of 1920 which have been referred to throughout the trial of this case and in the briefs of counsel as the Act of June 4, 1920, and such designation will be continued herein.

The Act is as follows: [868]

“Provided that the Secretary of the Navy is directed to take possession of all properties within the navel petroleum reserves as are or may become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled ‘An Act to provide for the Mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain,’ or pending applications for United States patent under any law; to conserve, develop, use and operate the same in his discretion, directly or contract, lease, or otherwise, and to use, store, exchange or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said Act of February 25, 1920, are not affected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed \$500,000, are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value

of the oil, as the Secretary of the Navy may direct." (41 Stat. 812)

My attention has been called to no ruling or decision of any court in which this Act of Congress has been considered, interpreted or construed. In order to ascertain the intent as well as the scope of this law, consideration should be given to the legislative history relating to the naval petroleum reserve and leading up to the passage of this statute. The lands known as Naval Petroleum Reserve No. 1 in which all of the oil bearing lands involved in this suit are located were carved out of the public domain and set apart for naval reserve purposes by an Executive order of the President of the United States promulgated September 2, 1912. In this order it is stated that these lands "shall be held for the exclusive use and benefit of the United States Navy." Prior to the promulgation of this Executive order the lands had been withdrawn from public entry by another Executive order of the President of the United States in 1909. While the lands were segregated for the use of the Navy by these executive mandates there had been provided no legislation whereby any of the withdrawn lands could be used or occupied until the Leasing Act of February 25, 1920 (41 Stat. 437), was passed. This Leasing Act authorized leasing of lands in the naval oil reserves in settlement of pre-existing claims under the placer mining laws of the United States. It has been previously noted that the only provision in the Leasing Act of 1920 as to the use and disposition of royalty oils accruing to

the United States from leases made under said act was that the Secretary of the Interior, "except whenever in his judgment it is desirable to retain the same for the use of the United States," [869] shall offer the royalty oil and gas for sale at public auction. In cases where no satisfactory bid was received he then might re-advertise such royalty oil and gas for sale, or might sell the same at private sale at not less than the market price, or he might accept the value thereof from the lessee. The Leasing Act further empowered the Secretary of the Interior, pending the making of a permanent contract for any sale of royalty oil in accordance with the provisions of such act, to sell the current product at private sale at not less than the market price. (Sec. 36, Act of Feb. 25, 1920, *supra*.)

The Secretary of the Interior was therefore given by this Leasing Act of 1920 but two alternatives as to any royalty oil and gas within or produced from the naval oil reserves. He could either retain it for the use of the United States, or sell it. The power to retain the royalty oil and gas for the use of the United States was neither substantial nor practicable because the Secretary of the Interior had no storage facilities in which the oil could be retained after production. This power was illusive and fictitious. Moreover, the royalty crude oil could not be satisfactorily used except in the course of some exchange, or other disposition, as to which no specific powers were granted by law. The crude oil as such could not be used by the Navy. It was unsuitable to any naval use. It was therefore of the ut-

most importance if the naval oil reserves were to be such in fact as well as in name that some remedial and enabling legislation be provided immediately in order that the Navy might really and actually be the beneficiary of the oil reserves of the nation which were set apart by Congress for the Navy's use. This purpose had not been accomplished by the Leasing Act or by any other existing legislation as under all acts prior to the Act of June 4, 1920, the right to deal with these reserves was strictly limited without any consideration being given to the interest of the Navy and even the royalty oils due to the Government from leases to land within the reserves were handled on a purely commercial basis. There was no real naval use authorized by law.

These reserves while legally carved out of the contiguous and adjacent lands are nevertheless physically inextricably connected with such lands. [870] The line of demarcation exists only upon the surface of the reserves. The fugitive mineral which makes the reserves of any value or use to the Navy cannot be confined within the limits of the reserves as long as those who own or operate the contiguous areas of land extract oil and gas by drilling wells upon their lands. There had been prior to the passage of the Act of June 4, 1920, much development of such adjacent lands. Many wells were drilled on such lands and many of them produced oil and gas in great quantities and continuously. This condition was necessarily menacing to the naval petroleum reserves because it had been scientifically determined that much of the

oil and gas in the reserves was being drained into the private property of the adjacent lands, and there was no way by which such oil could be recovered. Even defensive measures to protect the oil and gas within the reserves were impossible as there was no law under which such measures could be justified. Necessary offset wells could not be drilled, and if conditions respecting the reserves had continued as they were before the passage of the Act of June 4, 1920, the reserves would ultimately have been depleted and the Navy would not have received any benefit whatever from them. So until the Act of June 4, 1920, there was no comprehensive or adequate scheme for administering the naval reserves so that the Navy might be the recipient and beneficiary of these reserves and their products. There was no way by which the object for which these oil lands were carved out of the public domain could be attained.

It is apparent therefore from a study of the legislation in effect prior to the enactment of the law of June 4, 1920, and the known physical and geological conditions as shown by the evidence in this case, as well as from a consideration of the words and terms of the statute of June 4, 1920, that Congress intended by it to construct a complete and comprehensive legislative scheme broad enough to cover all matters in connection with naval reserve affairs and to supplant all previous congressional action with respect to the control of the naval petroleum reserves of the United States. The paramount intent was to preserve the reserves for

the use of that agency of the Government for which they had been set apart and to invest the head of such agency of Government with plenary power to control [871] and administer these reserves as his discretion would dictate and for the benefit of the United States. The statute therefore being remedial is to be liberally and not strictly construed by the court in order to carry out and effectuate the legislative intent.

Stewart vs. Kahn, 11 Wall. U. S. 493.

Hamilton vs. Rathbone, 175 U. S. 414.

Harris vs. Bell, 254 U. S. 109.

If possible a remedial law must be construed in such a way as to effectively accomplish the legislative purpose. Harris vs. Bell, *supra*.

Our entire object must be to ascertain the intention of the legislature and the ill intended to be remedied and in the ascertainment of such intentions and in order to give the law in question a proper construction the Court may look into prior and contemporaneous acts, the reason which induced the act in question, the mischief to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by the statute. Hamilton vs. Rathbone, *supra*.

And in construing a remedial statute such as the Act of June 4, 1920, in the absence of clear necessity to the contrary, the words and language of the law must be interpreted and applied in their ordinary usage and meaning.

De Ganay vs. Lederer, 250 U. S. 376.

Dewey vs. United States, 178 U. S. 511.

U. S. vs. First National Bank, 234 U. S. 245.

The particular words in the Act of June 4, 1920, which it is necessary to construe in this case are "exchange" and "store." The power to "store" was exercised in this case primarily through the operation of an exchange, so the crux of this controversy is the extent and scope of the "exchange" power. The ordinary meaning of the word "exchange" is:

"A contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only."

California Civil Code, Sec. 1804.

In the contracts now before the Court the parties exchanged crude oil taken from the naval petroleum reserves for fuel oil and other petroleum products usable and necessary for naval use and necessary storage facilities by which such fuel obtained by the exchange could be possessed and reserved [872] for use by the Navy.

The plaintiff asserts that under the Act of June 4, 1920, this cannot be done. The contention is that crude oil may be exchanged under said act only for fuel oil or some form of petroleum products derived from crude oil. That the storage facilities or containers contracted for cannot be obtained under the exchange power or any other power conferred upon the Secretary of the Navy by this law. I am unable to agree with such contention. In taking this position plaintiff reads into the meaning of the word "exchange" something that is not found in the Act of June 4th or in the meaning of the word

itself. The word is employed in the statute in its ordinary sense without any limitation, explanation or qualification, and plaintiff is not justified in imposing, or inserting, or reading into the law, anything. The plaintiff's concession that crude oil may be exchanged for fuel oil destroys the force of the contention because there is nothing in the statute which justifies the exchange of crude oil from the reserves for fuel oil to the exclusion of any other commodity usable for naval purposes for the benefit of the United States. Why crude oil can be exchanged for fuel oil but not for commodities and facilities necessary to store and to use such fuel oil I fail to see.

The exchange power granted by the Act of June 4, 1920, is general, unrestricted and plenary. Its only limitations are the discretion of the Secretary of the Navy and the Benefit of the United States. As long as the power was exercised within these two limitations it was unquestionable. The word implies no other meaning in the statute and Congress could have intended nothing less. This construction is re-enforced when the other provisions and verbiage of the statute are examined and considered. The Act was a broad grant of power from Congress to the Secretary of the Navy to administer, control and use these reserves in any manner that his discretion dictated in order to make them actually petroleum reserves for the use of the Navy and the benefit of the United States. The Congress appropriated and set aside for the use of the Navy not only the lands and their petroleum contents but

it also additionally appropriated and set aside \$500,000 in money which it gave the Secretary of the Navy the right to use until July 1, 1922, in [873] connection with his general power of administration and control of the reserves for the benefit of the United States. The grant of power as well as the discretion to be exercised by the Secretary of the Navy in executing this grant under the Act of June 4, 1920, extends to all points and conditions connected with the naval reserve lands and the handling, use and disposition of the Government direct and royalty products therefrom, either by selling the production or by exchanging the products immediately on production or afterward for the purpose of giving and securing to the Navy a supply and reserve of fuel oil or other petroleum products necessary for the Navy and beneficial to the United States. Anything done by the Secretary of the Navy in good faith to attain these purposes is lawfully done within the comprehensive, plenary and exclusive Act of June 4, 1920.

If this exchange power is unlimited then no reason can be assigned why all things entering into an exchange should be confined upon the lands of the naval petroleum reserves. The United States is more benefited by effecting an exchange of the royalty crude oil for fuel oil delivered at points where the fuel oil can be used by the Navy than by retaining the oil obtained in the exchange upon the lands of the reserve. The purpose and intent of the lawmaker was to not only establish and create a naval oil reserve but to do so in a practical,

effective and useful manner. It is certainly unreasonable to assume that it was intended that the oil and petroleum products of the reserve should always be kept inland and underground.

If plaintiff admits that the royalty crude oil can be exchanged for fuel oil under this law then he must go a step further and admit that a receptacle necessary to hold the fuel oil can be received in the exchange and if the container can be received and utilized upon the lands of the reserve there is no reason apparent to me why the fuel oil and its container cannot be received at some other point. This seems to me to be not only implied from the power to effect the exchange but the law expressly authorizes it to be done by giving the Secretary the power to "store the oil and its products." [874]

But it is said that it cannot be supposed that it was within the intention of Congress to allow the Secretary of the Navy to render so large a portion of the Navy's crude oil unavailable for fuel purposes of the Navy as the amount which is required under the exchange provisions of the contracts to be delivered in consideration of the construction of the additional storage facilities at Pearl Harbor as distinguished from the fuel oil to be delivered into such storage facilities when completed. But plaintiff forgets that before this Act of June 4, 1920, became law, all of the royalty oil from these Naval reserves was being sold and was therefore totally unavailable for direct naval use or national defense either as fuel or otherwise. Moreover, under this new law the power to sell the royalty crude oil still

exists as completely as before and surely Congress did not intend to subtract from or reduce the power to dispose of this royalty crude oil, but on the contrary manifestly intended to enlarge and extend the power.

The money appropriation clauses do not affect in any manner the general investiture of the exchange and storage powers. This is not only apparent because of the words of the statute but also because it would be absurd to say that the Congress intended to provide for the conservation and safeguarding of the reserves only until July 1, 1922. The main purpose was to correct and to remedy an evil that existed in the management and control of this property. Correction or remedy for two years would be insufficient. The evil to be remedied was permanent and becoming progressively worse and it is certainly not to be held that the small amount of money appropriated was considered adequate to attain the main purpose of the law. The whole statute must be given effect if this can be done. It cannot be done by limiting the exchange power of the Secretary of the Navy by the money appropriation. It would then provide for merely a temporary reserve which in reality would amount to no reserve at all. An oil reserve inherently and necessarily pertains to a future use.

There are certain provisions in the contracts in controversy that clearly manifest the intentions of the parties in making such contracts and which must be considered in determining whether such parties actually and legally made an exchange con-

tract by the agreements in suit. In the contract of April 25, [875] 1922, it is stated:

"It is the intention of the parties hereto to effect an exchange of crude oil which is unsuitable for fuel for the United States Navy and which is produced from naval petroleum reserves in California for fuel suitable for the use of the United States Navy to be delivered by the contractor at the United States Naval Station at Pearl Harbor, Territory of Hawaii, into storage facilities to be constructed and erected by the contractor."

And in the later contract of December 11, 1922, which was in part an enlargement and extension of the April 25th contract, it is also provided that:

"Whereas a certain contract was entered into by the above named parties dated April 25th, 1922, providing for the exchange of royalty crude oil belonging to the Government and produced from Naval Reserves Nos. 1 and 2 in the State of California for fuel oil in storage at Pearl Harbor, T. H., including tanks and incidental facilities, and whereas said contractor has expressed a willingness to furnish the desired amount of fuel oils and other petroleum products in storage for crude oil in the field," etc., etc.

And further in Article II of the contract of December 11, 1922, it is stated that:

"For the consideration herein mentioned and contained, to-wit, the furnishing of oils in stor-

age and facilities and options as specified above, the Government agrees to deliver in exchange to contractor all royalty oil," etc.

There is no language in either of the contracts indicative of an intention on the part of the parties thereto to effectuate an arrangement wherein cash or money would be transferred between the parties, except an option retained by the Government effective after the completion of the Pearl Harbor project and other projects under the December 11th contract. This option had no relation to the exchange elements of the contracts. There are terms used in the contracts which imply that in arriving at the basis of the exchange agreements certain pecuniary computations are made, but under the decisions of the federal courts this method of ascertaining the quantum of the things sought to be exchanged does not destroy the exchange quality of the contracts.

But the plaintiff has earnestly contended that assuming that the Act of June 4, 1920, grants to the Secretary of the Navy the power to exchange the royalty oil in the reserves for fuel oil and storage facilities the contracts of April 25, 1922, and December 11, 1922, respectively, are not exchange contracts but in reality sales of the royalty oil. Plaintiff says [876] that the April 25th and the December 11th contracts were not true contracts of exchange because no final fixed quantity of either crude oil or fuel oil was definitely specified as the maximum amount which was deliverable by either party to the other.

The provisions of the April 25, 1922, contract in this regard, stated generally, are: That on April 25, 1922, the price of crude oil in the field was \$1.10 per barrel, and the price of fuel oil at the same time at the California Coast was \$1.50 per barrel. It was understood and agreed that deliveries of fuel oil would be made by the contractor at different times thereafter and that the price thereof might at the date of delivery of a given quantity vary from the reference price of \$1.50 specified in the contract. It was also stated that the delivery of royalty oil would be made at various times until the cost of the Pearl Harbor storage and the fuel oil to fill it was defrayed and that at such times the published field price of such royalty crude oil might also vary from the specified reference price of \$1.10 per barrel, and therefore, in order to protect the interests of both parties to the contract and avoid making a purely gambling contract, it was provided that the quantities of crude oil delivered on the one hand and of fuel oil delivered on the other should be subject to change from amounts originally estimated, such change being proportionate to the changes in price above stated of these respective commodities.

And with respect to the December 11, 1922, contract, inasmuch as it differed from the April 25th contract in having no proposal sum of barrels of royalty crude oil for which the contractor agreed to do those various things mentioned in the December 11th contract, provision was made in said December 11th contract that all royalty crude oil delivered to the contractor according to the contract should be

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delivered at published field price on day of delivery and that all fuel oil delivered by contractor to the Government should be delivered at the market price thereof at the respective dates of delivery at California shipping points plus the going rate for transportation to Pearl Harbor, Hawaii. In other words, both contracts contemplated practically certain changes in the price or market value of the two commodities to be delivered during the lives of the contracts respectively, and accordingly [877] made the quantities respectively deliverable in final adjustment of the obligations of the parties depend upon the extent of the price changes.

As I have said, it is clear however that no provision in either contract contemplates or implies the payment of any cash by either party to the other at any time or under any circumstances in connection with the proposed charges whatever may be the fact as to the differences in the valuation of the commodities involved. There is a provision in the December 11th contract in which the Government is given the right to take the equivalent of the royalty crude oil delivered in cash instead of fuel oil and storage facilities. This option applies only after the Pearl Harbor project under both the April and December contracts has been completed and if it does destroy the exchange feature of this contract it does so only upon the entire completion of the Pearl Harbor project under both contracts, and would only vitiate the December contract to a limited extent and not totally, and as no attempt has

been made to effectuate such provision or option its effect is immaterial in this case.

McCullough vs. Smith, 243 Fed. 823;

Burke vs. Southern Pacific Co., 234 U. S. 669.

Except as just stated these two contracts provided that, while the quantity of the commodity was dependent upon price changes, there was never to be delivered by either party to the other anything but property of the kind and quality specified in the contracts, and under no circumstances or conditions except as stated was any payment of money to be made.

This claim of plaintiff, that the determination of the quantity of the commodities to be delivered by reference to varying market prices of the two kinds of petroleum products transformed the arrangement embodied in the contract from an exchange to a sale on the one hand of royalty crude oil and a purchase on the other of fuel oil and of storage facilities, is untenable. The Supreme Court of the United States in *Postal Telegraph-Cable Company vs. Tonopah & Tidewater Railroad Company*, 248 U. S. 471, has held that contracts similar and analogous to the contracts of April 25, 1922, and December 11, 1922, were exchange contracts. This case and those in the lower federal courts from which it arose cannot be distinguished in principle [878] from the case at bar. The contract under consideration in the *Postal Telegraph-Cable Company vs. Tonopah & Tidewater Railroad Company*, *supra*, was one where, *inter alia*, the telegraph company agreed to transmit free of charge all railroad business tele-

grams between all points on the railroad, and also agreed to issue to the railroad officers annual franks for railroad messages to points off the railroad lines to an amount not exceeding \$10,000 per annum, calculated at the regular day rates, and the railroad company agreed to transport free of charge the employees, materials and supplies of the telegraph company to points on its lines, and also to transport free of charge the employees, materials and supplies of the telegraph company to points off the lines to an amount not exceeding \$10,000 per annum, calculated at current transportation rates. The question arose as to whether such a reciprocal arrangement constituted a true exchange contract of services within the meaning of Section 1 of Interstate Commerce Act as amended in 1910.

The situation shown by this telegraph-railroad contract is almost the identical situation established by the contract of April 25, 1922, and of December 11, 1922. The engagement in the cited case was not for the transportation of a given number of men or a given number of tons of freight on the one hand, and a given number of telegrams on the other, but in each case the *quantum* of the service to be rendered was to be fixed by reference to a changeable cash standard, that is to say, such amount of service as based upon the cash standard for the unit of service should equal a given aggregate sum. In the course of this opinion Justice Holmes said:

“Exchange is barter and carries with it no implication of reduction to money as a common

denominator. It contemplates simply an estimate, determined by self interest, of the relative value and importance of the services rendered and those received."

In other words, the Supreme Court held that the parties may exchange without necessarily making any reference to money, but if they desire they may estimate the value of the respective things involved in any manner which "self interest" may determine.

In *Baltimore & Ohio Railroad Company vs. Western Union Telegraph Company*, (C. C. A.) 242 Fed. 914, the Court was considering whether a contract identical [879] with the one in the *Tonopah Railroad case*, *supra*, was an exchange contract for services. In pointing out that the placing of a money valuation upon the properties exchanged or to be exchanged does not convert the transaction into a sale in the absence of such an intention between the parties, it said:

"In our opinion (in the absence of fraud) the right to exchange implies the right to fix the rate, method, and amount of exchange. The agreement being to exchange the carriage of goods against the transmission of intelligence, each party has the further right to fix the value of the services of each to the other; it makes no difference whether for convenience they ascertain that value by the usual money measurement or adopt some other course."

It cannot be truthfully said that an exchange becomes a sale whenever one of the things exchanged is valued. An exchange is always an exchange when

things other than money are transferred in consideration of other such things, whether or not either or both of the things have or are given by the parties a money value.

If the engagement embodied in the contracts in suit should be held to be a sale it would still be within the terms of the Act of June 4, 1920, because that statute gave to the Secretary of the Navy the power to sell the royalty oil as well as to exchange it. I am of the opinion however that the contracts are exchange contracts. It was not only the intention of the parties to make them exchange contracts but under the authorities cited they must be held to be exchange contracts.

The final contention of plaintiff is that the contracts and leases involved in this action are illegal and void and should be annulled because in them the Secretary of the Navy has surrendered, relinquished and delegated to the Secretary of the Interior essential and vital powers which are vested solely in the Secretary of the Navy by the Act of June 4, 1920.

This question depends to some extent on the effect that is to be given to the Executive order of May 31, 1921. It is to be noted, however, that defendants did not consider that Executive order as authorizing the Secretary of the Interior to make the contracts and leases in suit. Attention has already been called to the demand of the defendants at the time that the initial and paramount contract of April 25, 1922, was about to be signed that the Secretary of the Navy must sign this contract. There apparently [880] had been no intention on the

part of Secretary Fall, Admiral Robison or any other official of the Government that anyone but the Secretary of the Interior would be required to sign the contract on behalf of the Government.

If the Executive order of May 31, 1921, purports to confer upon the Secretary of the Interior the authority which Congress had lodged exclusively in the Secretary of the Navy, it is, in my opinion, void to that extent. The President in peace time could not even under his powerful and extensive general executive authority transfer from one member of his Cabinet to another member of his Cabinet powers and duties that had been conferred by the Congress on a specified Cabinet officer that call for the exercise of discretion by the Cabinet officer from whom such power is attempted to be transferred. Insofar as systematizing, co-ordinating and facilitating the conduct of the Executive departments of Government are concerned the President could lawfully transfer duties between Cabinet officers, but the transfer attempted by the Executive order of May 31, 1921, goes much further. The office of Secretary of the Navy was created by Act of Congress, and the Congress under the Constitution is given sole power to provide and maintain a Navy. The administration and conservation of the naval petroleum reserves comes within the power conferred by the people upon Congress alone, and in delegating certain and specific powers and rights to the Secretary of the Navy with respect to the naval petroleum reserves which call for the exercise of such officer's discretion it must be held that Congress did not

intend that some other branch of the Government could transfer this power to some other officer or divest the officer, in whom Congress reposed the authority, of the power which Congress has conferred upon such officer exclusively. No branch of the Government but Congress can divest or transfer the power so delegated. Even the Secretary of the Navy himself cannot delegate or transfer essentially discretionary powers concerning the naval petroleum reserves which have been reposed in him exclusively by the Congress. He may with the approval of the President establish regulations in execution of or supplementary to, but not in conflict with, the statutes defining his powers.

United States vs. Symonds, 120 U. S. 49.

The leases of June 5, 1922, and December 11, 1922, give the Secretary [881] of the Interior *sold* authority to oversee the progress of the work upon the leased area requiring for this purpose the submission to him of plats showing such work, and of sale contracts with respect to the disposal of the oil and gas produced under the leases. The Secretary of the Interior is further expressly given the sole right to permit suspension of work under the leases, and also the sole right to authorize, sanction or permit any assignment or subleasing, as well as full exclusive authority to terminate or surrender the lease. It is his and not the Secretary of the Navy's discretion that settles and determines such matters.

By the two contracts the Secretary of the Interior solely is also given vital and extensive powers re-

quiring the exercise of discretion. Among these is the right to grant additional leases on such lands in the naval oil reserves as he may designate if he shall determine that the royalty oil from the reserves diminishes so that the Pearl Harbor contract will be unduly prolonged. And Article XI of the contract of April 25, 1922, confers solely upon the Secretary of the Interior complete authority and power to determine when and upon what terms Townships 30 and 31 South, Range 24 East, M. D. M., of Reserve No. 1 may be leased to the defendants. The December 11th contract reiterates and re-establishes the right of the Secretary of the Interior to determine how and when the defendant may exercise its valuable preferential right conferred by Article XI of the contract of April 25th, and also vests the Secretary of the Interior with sole power to direct the defendant to fill the storage tanks at Pearl Harbor with fuel oil. Other instances of the delegations of vital power to the Secretary of the Interior are found in the specifications which accompany each of the contracts and are part of them. It is unnecessary to specifically mention them here. Suffice it to say that these powers are so important, necessary and essential to the agreements that if they are eliminated the essence and vitality of the entire plan of the contracts and leases is gone.

These delegated powers are not merely incidental to any power retained by the Secretary of the Navy. They are not purely ministerial or administrative. They are in fact the principal controlling powers

that the Act of June 4, [882] 1920, vests exclusively in the Secretary of the Navy so that he, and he only, can control and administer these reserves for the benefit of the Navy and of the United States. The delegated powers require the Secretary of the Interior to exercise judgment and discretion, and the attempted transfer of such powers from the Secretary of the Navy renders the contracts and leases void.

Mechem on Public Officers, Secs. 567-568-604.

1 McQuillin on Municipal Corporations, 839.

There is no merit in the contention of defendants that the Secretary of the Interior is merely made the agent of the Secretary of the Navy by these provisions of the contracts in which the delegations of powers are found. The authority is conferred on the Secretary of the Interior and juris and not as the representative of the Secretary of the Navy.

I conclude this opinion by summarizing my decision of this case as follows:

The plaintiff is entitled to the cancellation and annulment of each of the contracts and leases in controversy by reason of fraud and conspiracy of Secretary Fall and Mr. Doheny as alleged in the amended bill of complaint and also because each of said contracts and leases is void on account of the illegal and invalid transfer and delegation of power from the Secretary of the Navy to the Secretary of the Interior as shown by certain provisions in each of the contracts and leases. If it were not for the fraud and conspiracy of Secretary Fall and Mr. Doheny and the unlawful delegation of power in the

agreements, the contracts and leases in suit would be authorized and would be binding obligations upon the United States of America under the Act of June 4, 1920.

The record in this case, however, does not entitle the plaintiff to the full relief demanded by the amended bill, and although plaintiff makes no offer to do equity in the premises, this court nevertheless in a suit of this kind has the inherent power to administer equity between the parties commensurate with the special circumstances and conditions of the case. [883]

Pomeroy's Equity Jurisprudence, Vol. 5, Sec. 2110.

Plews vs. Burrage (C. C. A.) 274 Fed. 881.

Twin Lakes L. & W. Co. vs. Dohner (C. C. A.) 242 Fed. 399.

Knappen vs. Freeman, 47 Minn. 491.

The evidence proves that there has been constructed and completed under the direction of the defendants at Pearl Harbor, Hawaii, all of the fuel oil storage facilities mentioned in the contract of April 25, 1922, and that there has also been constructed and completed under the direction of the defendants at Pearl Harbor, Hawaii, much of the additional storage facilities for crude oil products mentioned in the contract of December 11, 1922; and it has been clearly established that such construction projects and property are of benefit and value to the United States of America and to its Navy, and that the construction of such property has been done economically and without waste or

extravagance, and that such constructed facilities are now available for use by the United States of America and are now located on property of the Government at Pearl Harbor, Hawaii, and that the money expended for the construction and completion of said storage facilities for crude oil products at Pearl Harbor, Hawaii, has been expended by defendants upon property of the United States of America and under the supervision and inspection of the duly appointed officers of the United States Navy.

Such property should be retained by the plaintiff and the defendants are entitled to be credited with and to receive payment from the plaintiff for the cost price of the storage facilities for crude oil products completed and installed at Pearl Harbor, Hawaii, together with the cost price of such fuel contents thereof as have been to the date hereof placed within said storage facilities at Pearl Harbor, Hawaii, under the supervision of officers of the United States Navy. The plaintiff will also be required to pay or to credit the defendants with such money as has been actually expended in drilling and putting on production any wells drilled under the lease of June 5, 1922, or the lease of December 11, 1922.

During the pendency of this action the lands within the naval petroleum reserves in controversy have been controlled, managed and operated by receivers of this court, Rear Admiral Harry H. Rousseau, C. E. C., U. S. N., and Mr. J. Crampton Anderson in an unusually efficient and economical

manner. [884] Production of oil therein has been curtailed to the fullest extent consistent with offset and defensive requirements and there has been a cessation of drilling on the land in controversy except where drilling was imperative. It is necessary that such defensive activities be continued at least until the entry of final decree herein and the receivership will therefore continue until further order of the court.

In order to carry out the terms of this decision a special master in chancery will be appointed *pro hac vice*.

Special counsel and solicitors for plaintiff will prepare a decree pursuant to the findings of fact and conclusions of law which I have filed with this opinion and under the rules of this court.

Dated this 28th day of May, 1925.

PAUL J. McCORMICK,
United States District Judge. [885]

(Name of Court and Title of Case.)

FINDINGS OF FACT.

Filed May 28, 1925. Chas. N. Williams, Clerk.
By R. S. Zimmerman, Deputy.

From the evidence in this suit the Court finds:

1. That defendant Pan American Petroleum Company is, and at all times mentioned in the amended bill of complaint was, a corporation duly organized and existing under and by virtue of the laws of the State of California, and at all of said

times was and now is wholly owned and absolutely controlled, through the ownership of its entire capital stock, by the other defendant, Pan American Petroleum and Transport Company.

2. That Pan American Petroleum and Transport Company is now, and was at all times mentioned in the amended bill of complaint, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

3. That Edward L. Doheny was, up to July 24, 1922, President of each of the defendant corporations. That on or about July 24, 1922, he retired as president of the Pan American Petroleum Company and became chairman of its board of directors. That he continued as president of defendant Pan American Petroleum and Transport Company up to December 7, 1923, at which time he retired as such president and was duly elected chairman of the board of directors of said corporation.

4. That at all times mentioned in the amended bill of complaint said Edward L. Doheny, directly or indirectly, controlled over fifty per cent of the voting stock of defendant Pan American Petroleum and Transport Company.

5. That said Edward L. Doheny, at all times mentioned in the amended bill of complaint, purported to be and was in fact in effective control of the policies and actions of Pan American Petroleum and Transport Company and its subsidiary, Pan [886] American Petroleum Company.

6. That Albert B. Fall, from March 5, 1921, until March 4, 1923, was the duly appointed, qualified,

and acting Secretary of the Interior of the United States of America.

7. That Edwin Denby, at all times mentioned in the amended bill of complaint, was the duly appointed, qualified, and acting Secretary of the Navy of the United States of America.

8. That at and long prior to the filing of the bill of complaint herein, United States of America, the plaintiff, was and has ever since remained the owner in fee simple of the lands described in paragraph 5 of the amended bill of complaint; that all of said lands were a part of the unappropriated public domain of the United States of America.

9. That on, to wit, September 2, 1912, the President of the United States of America, pursuant to law, made a certain Executive order setting apart the lands described in paragraph 5 of the amended bill of complaint, wherein and whereby he ordered as touching said lands, as follows:

"It is hereby ordered that all lands included in the following list and heretofore forming a part of petroleum reserve No. 2, California No. 1, withdrawn on July 2, 1910, from settlement, location, sale, or entry and reserved for class-identification and in aid of legislation under the authority of the act of Congress entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases (36 Stat. 847),' shall hereafter, subject to valid existing rights, constitute naval petroleum reserve No. 1, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by

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the President or by act of Congress. To this end and for this public purpose the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended in so far as it effects these lands.

Mount Diablo Meridian.

T. 30 S., R. 22 E., sec. 24, all.

T. 30 S., R. 23 E., sec. 10, all; secs. 12 to 30, inclusive; secs. 32 to 36, inclusive.

T. 31 S., R. 23 E., secs. 1 to 4, inclusive; secs. 10 to 14, inclusive.

T. 30 S., R. 24 E., secs. 17 to 20, inclusive; secs. 28 to 34, inclusive.

T. 31 S., R. 24 E., secs. 1 to 12, inclusive; sec. 18, all.

WM. H. TAFT,
President.

September 2, 1912."

10. That on May 31, 1921, Warren G. Harding, the President of the United States of America, made and issued a certain writing which is known as the Executive order of May 31, 1921, and is as follows:

"EXECUTIVE ORDER.

Under the provisions of the act of Congress approved February 25, 1920 [887] (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserves; authorizing the President to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat. 812),

directing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 2 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in co-operation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

The White House, May 31, 1921."

11. That the said Albert B. Fall did not make any false, fraudulent, or untrue representations of fact to the said Warren G. Harding, the President of the United States of America, for the purpose of inducing the making of the Executive order of May 31, 1921.

12. That said Albert B. Fall was very active in procuring the transfer of the naval oil reserves from the Navy Department to the Interior Depart-

ment, and subsequent to the promulgation of the Executive order of May 31, 1921, said Fall dominated the negotiations that eventuated in the contracts and leases in suit.

13. That Edwin Denby, Secretary of the Navy, was passive throughout all of the negotiations that eventuated in the contracts and leases in suit, and took no active part in said negotiations, and that he signed the contracts of April 25, 1922, and December 11, 1922, and the lease of December 11, 1922, and the letter of April 25, 1922, under misapprehension and without full knowledge of the contents of said documents.

14. That on July 8, 1921, said Albert B. Fall did communicate in writing to said Edward L. Doheny as follows:

"There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under the direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau in his department, but only with himself, and such consultation will be confined strictly and entirely to matters of general policy."

15. That said Edward L. Doheny, and the defendants Pan American Petroleum and [888] Transport Company and Pan American Petroleum

Company, from and after July 8, 1921, understood and acted upon the belief that said Albert B. Fall had authority to make contracts and leases touching royalty oils from lands in the naval reserve and touching said lands themselves, and said Doheny and said Pan American Petroleum and Transport Company and said Pan American Petroleum Company dealt with said Fall accordingly.

16. That between July 8, 1921, and October 25, 1921, said Albert B. Fall and said Edward L. Doheny held personal conferences with regard to the royalties reserved to the United States under a certain lease granted to Pan American Petroleum Company for a strip of land in the northeastern portion of Section 1, Township 31 South, Range 24 East, M. D. M., Kern County, California.

17. That between July 8, 1921, and October 25, 1921, said Albert B. Fall and said Edward L. Doheny held conferences respecting a proposal to be made by and on behalf of Pan American Petroleum and Transport Company, a corporation, whereby said Pan American Petroleum and Transport Company, a corporation, should receive from the United States of America royalty oil accruing to the United States of America from leases on land in naval reserves Nos. 1 and 2, California, and in consideration of such receipt should agree to erect certain storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil.

18. That at such conferences between said Albert B. Fall and said Edward L. Doheny had between July 8, 1921, and October 25, 1921, the matter of

granting further leases in naval reserve No. 1 was discussed between said Fall and said Doheny.

19. That on or before October 25, 1921, and prior to March 7, 1922, said Albert B. Fall and Admiral John K. Robison, personal representative of Secretary of the Navy Edwin Denby in naval reserve matters, agreed that the proposed contract for the construction of tankage facilities and filling the same should be kept secret.

20. That the reason and purpose of said agreement for secrecy was in order that Congress and the public should not know what was being done, and was not military reasons.

21. That pursuant to said agreement the proposed contract was concealed and kept secret until after the award was made on April 18, 1922, to Pan American Petroleum and Transport Company. [889]

22. That at and prior to November 30, 1921, there was pending in the Department of the Interior of the United States for action by the said Albert B. Fall, as Secretary of the Interior, a petition of Pan American Petroleum Company praying a reduction of the royalty of 55½ per cent reserved to the United States in the lease of July 12, 1921, whereby the United States leased to said company certain territory in the northeastern portion of Section 1, Township 31 South, Range 24 East, M. D. M., Kern County, California, in naval reserve No. 1.

23. That at and prior to November 30, 1921, there was pending before the Department of the

Interior of the United States, for action by the said Albert B. Fall, as Secretary of the Interior, a proposition by Pan American Petroleum and Transport Company, a corporation, whereby, in consideration of the receipt of royalty oils by said company, and in consideration of the granting of further leases of lands in naval reserve No. 1 to said company, said company would agree to erect certain storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil.

24. That on, to wit, November 28, 1921, said Edward L. Doheny, acting for and on behalf of defendant Pan American Petroleum and Transport Company, submitted to said Albert B. Fall a proposition in writing, a true copy whereof is as follows:

**"PAN AMERICAN PETROLEUM AND
TRANSPORT CO.,**

Office of the President,

New York, November 28, 1921.

The Honorable, the Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

Along the lines of your suggestion, I have made some inquiries regarding the cost of constructing tanks for the storage of one and one-half million barrels of fuel oil at Pearl Harbor. I find that the best price obtainable for these tanks, the Government to stand the cost of transporting the material from the ship's side to the tank site, and the cost of grading and otherwise preparing the tank site, is \$19,960 per tank, or \$0.363 per barrel of storage capacity.

The present price of crude oil in the field in California is \$1.13 per barrel. The present cost of fuel oil delivered at Pearl Harbor is \$1.90 per barrel.

The cost of 1,485,000 barrels of fuel oil delivered at Pearl Harbor at present rates would be \$2,821,500, which, added to the cost of constructing the 27 tanks necessary to store this amount of oil, which is \$538,920, makes a total of \$3,360,420.

Therefore, were we to construct the tanks and furnish the oil on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserves and to be leased to us, it would require a return to us in royalty crude valued at \$3,360,420, or 2,973,823 barrels, figures at to-day's price. Of course, interest on the money invested should also be figured until final adjustment is made through the payment of royalty oil.

I suppose you will turn this matter over to First Assistant Secretary Finney, who, with Rear Admiral Robison, may arrange the details of it during your absence, and as I also expect to be absent, I am confidentially furnishing Mr. Cotter with the information so that he can intelligently discuss the matter with Mr. Finney.

Cordially yours,

E. L. DOHENY." [890]

25. That on, to wit, November 29, 1921, said Albert B. Fall wrote, signed, and forwarded to Admiral J. K. Robison, Chief of the Bureau of

Engineering of the United States Navy, a letter which is as follows:

"November 29, 1921.

My Dear Admiral:

Mr. Cotter will wait upon you with data, etc., with relation to oil tanks and royalty oils in connection with Pearl Harbor demands.

I have asked him also to hand you, for your inspection, the original of a letter from Colonel Doheny addressed to myself, containing a *résumé* of the data.

Should you think best to accept this proposition then of course it would be necessary, in my judgment, to turn over to Col. Doheny, if we can do so, leases upon further wells or area in the naval reserve in which he is now drilling. If this is done it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American.

The gas pressure is lessening to such a degree that the output of the wells of the two latter companies, as well as of other companies drilling in this neighborhood, is decreasing and is very disappointing. The two companies named are pumping their wells and of course they are not making any money but will experience a loss in the payment of the fifty-five per cent royalty to the Government.

If you approve the proposition, will you kindly indicate to me such approval by simple endorsement upon Col. Doheny's letter to myself, signed

by yourself. Your simple O. K. will be sufficient.

Very sincerely yours,

ALBERT B. FALL.

Rear Admiral John K. Robison,

Engineer in Chief, Navy Department."

26. That on, to wit, November 30, 1921, said Albert B. Fall was willing, ready, and desirous to consummate a contract with Pan American Petroleum and Transport Company along the lines outlined in said letter of November 28, 1921, and said letter of November 29, 1921.

27. That said letters mentioned in Findings 24 and 25, above, contain, express and imply an understanding and agreement between said Albert B. Fall, as Secretary of the Interior of the United States of America, and Edward L. Doheny, as executive and managing officer of Pan American Petroleum and Transport Company, a corporation, that Fall would upon the execution of the contract along the lines agreed upon in said letter of November 28, 1921, grant to the Pan American Petroleum and Transport Company, a corporation, further and additional leases in naval petroleum reserve No. 1, in consideration for the construction of storage facilities for 1,485,000 barrels of fuel oil at Pearl Harbor, T. H., and the filling of the same with fuel oil, the said construction and fuel oil to be exchanged for royalty crude oil due the United States from existing leases and further leases agreed to be made in the naval petroleum reserves, and said correspondence was in no sense

and was not understood to be a mere [891] estimate.

28. That prior to November 30, 1921, said Albert B. Fall and said Edward L. Doheny discussed a proposal that the said Edward L. Doheny should advance and deliver to the said Albert B. Fall the sum of \$100,000 lawful money of the United States for the personal use of said Albert B. Fall; and that said Edward L. Doheny agreed if and when said Albert B. Fall should need said sum to advance the same to him.

29. That on, to wit, November 30, 1921, said Edward L. Doheny, then being in New York City, New York, did at the request of said Albert B. Fall, transmit to said Albert B. Fall in Washington the sum of \$100,000 lawful money of the United States.

30. That said Edward L. Doheny did not transmit said sum in the usual manner customary in business transactions as he could have done; but on the contrary transmitted the same in currency.

31. That the said currency was obtained from Blair & Company, bankers, of New York City, by the use of the check of Edward L. Doheny, Jr., the son of Edward L. Doheny.

32. That the said currency was sent in a satchel by the hands of said Edward L. Doheny, Jr., from New York to Washington, where the said currency was delivered to said Albert B. Fall. That no entry of the withdrawal of said currency appears in the account of said Edward L. Doheny with Blair & Company.

33. That no entry of said advance or of said transaction, nor of any personal transaction growing thereout between said Albert B. Fall and said Edward L. Doheny, has ever been made a matter of record or entry in the books of said Edward L. Doheny or of either of the defendants.

34. That said Albert B. Fall did, on November 30, 1921, hand to said Edward L. Doheny, Jr., who delivered the same to said Edward L. Doheny, a note payable on demand after date and bearing date Washington, D. C., November 30, 1921, in the sum of \$100,000 and payable to said Edward L. Doheny at New York City, or Los Angeles, California, value received with interest.

35. That no sum, either on account of principal or interest, has been paid by the said Albert B. Fall to the said Edward L. Doheny on account of said note, or on account of said sum of \$100,000 so advanced or on account of interest thereon.

36. That within a few weeks after the giving of said note the signature of Albert B. Fall thereon was torn from said note by said Edward L. Doheny, and said [892] note remains so torn.

37. That the purpose of such tearing was so that said note would not be an enforceable obligation of said Albert B. Fall in the hands of third parties.

38. That on or before December 1, 1921, said Albert B. Fall issued instructions to his subordinates in the Department of the Interior, that the petition of the Pan American Petroleum Company for reduction of royalties under the lease of July 12, 1921, should be refused, but that said company

should, as relief, be granted a lease at regulation Interior Department royalties in Section 1, T. 30 S., R. 24 E., M. D. M., Kern County, California, in naval reserve No. 1.

39. That said Albert B. Fall from, to wit, January 27, 1922, to April 15, 1922, knew and understood that Pan American Petroleum and Transport Company would make a bid to construct storage tankage facilities at Pearl Harbor, T. H., and fill the same with fuel oil, in consideration of the delivery to it of royalty oil of the United States, and in consideration that it should be assured further leases in naval reserve No. 1, Kern County, California. That said Albert B. Fall from, to wit, January 27, 1922, to April 25, 1922, was informed that the bid to be made by Pan American Petroleum and Transport Company would, so far as construction of storage tankage facilities and the filling of the same with fuel oil, be a bid at cost, and he further knew that said bid would involve the granting or assuring to Pan American Petroleum and Transport Company of further oil and gas leases of land lying within naval petroleum reserve No. 1 in California.

40. That no other person or corporation, except certain officers and agents of the United States, and except those operating with Pan American Petroleum and Transport Company in the matter, was advised that Pan American Petroleum and Transport Company would bid at cost for the construction and filling of said storage tankage facilities at Pearl Harbor, T. H.

41. That no other person or corporation was informed by said Albert B. Fall, or by any person acting on behalf of the United States in the premises, that the United States would consider a bid conditioned upon the assurance to the bidder of the granting of further leases in naval petroleum reserve No. 1, California, or preferential right to leases therein if and when made.

42. That due to the interest of said Albert B. Fall in furthering a contract with the Pan American Petroleum and Transport Company touching the construction and [893] filling of storage tankage facilities at Pearl Harbor, T. H., and the granting of further leases to Pan American Petroleum and Transport Company in naval petroleum reserve No. 1, California, Pan American Petroleum and Transport Company and its engineering representative, J. G. White, Engineering corporation, were, beginning in December, 1921, and continuing until April 15, 1922, kept in close touch with the development of the plans for said construction and for the making of a contract touching the same, and had opportunities for conference and advice from the officers and employees of the United States which no other bidder was afforded.

43. That the only oil companies with whose officers or representatives officers or employees of the United States conferred touching a proposed contract for delivery of royalty oils of the United States in consideration of the construction of storage tankage facilities at Pearl Harbor, T. H., and the filling of the same with fuel oil, were Pan

American Petroleum and Transport Company, Standard Oil Company of California, General Petroleum Company, Associated Oil Company, Pacific Oil Company, and Union Oil Company of California.

44. That said Albert B. Fall knew prior to April 15, 1922, that counsel for General Petroleum Company considered the proposed contract illegal and that said Company would not submit a bid.

45. That no invitations for proposals for the Pearl Harbor project were sent to General Petroleum Company.

46. That said Albert B. Fall knew prior to April 15, 1922, that counsel for Standard Oil Company of California was of opinion that the proposed contract was illegal and had written an opinion to that effect, and that Standard Oil Company of California would not bid upon the construction of tankage facilities in consideration of delivery of Government royalty oils.

47. That it was or could have been known to said Albert B. Fall prior to April 15, 1922, that Union Oil Company of California had not been asked to submit a bid for the construction of tankage facilities and the filling of the same with fuel oil at Pearl Harbor, T. H.

48. That no invitations for proposals for the Pearl Harbor project were sent to Union Oil Company of California.

49. That it was known to said Albert B. Fall prior to April 15, 1922, that [894] Associated Oil Company would not submit a bid for the con-

struction of storage facilities at Pearl Harbor and the filling of the same with fuel oil except upon the condition that authority should be obtained from Congress for the making of such a contract.

50. That said Albert B. Fall, prior to April 15, 1922, knew that invitations had been furnished to two construction companies, but he was of the opinion, and so stated, that it was impossible for construction companies to make bids on the proposed work of construction at Pearl Harbor, T. H., because the same would have to be paid for by delivery of royalty oils belonging to the United States.

51. That an invitation for proposals was issued calling for bids to be made to the Secretary of the Interior which bore date March 7, 1922. That the proposals submitted thereunder were opened April 15, 1922. That the only proposals received were as follows:

A proposal from Associated Oil Company which was conditioned upon congressional action approving the form of contract intended to be made.

A proposal from Standard Oil Company of California which did not cover the proposed construction work mentioned in the invitation, but applied only to the furnishing of fuel oil.

Two proposals from Pan American Petroleum and Transport Company, one called Proposal A, which was in accordance with the invitation, and the other called Proposal B, which was not in accordance with the invitation.

52. That said Proposal B named a smaller lump sum in barrels of crude royalty oil than did Pro-

posal A; that said Proposal B agreed that if the contractor's actual cost of the doing of the work of construction were less than a stipulated amount mentioned in the proposal, any savings effected below said stipulated amount should be credited to the Government; and that said proposal B was conditioned upon the granting by the United States of a preferential right to the Pan American Petroleum and Transport Company to become the lessee in all leases which might thereafter be granted by the United States for recovery of oil and gas in naval petroleum reserve No. 1, California.

53. That no other bidder was invited to compete for a contract upon the terms mentioned in Proposal B of Pan American Petroleum and Transport Company, nor was any bidder invited to bid upon any terms involving the granting of preferential rights to leases by the United States. [895]

54. That no person or corporation was advised by the officers or employees of the United States that it was expected any bid would be received for the doing of the construction work at Pearl Harbor at cost.

55. That said Albert B. Fall was not in Wilmington when the proposals were opened and scheduled on April 15, 1922. He left Washington for Three Rivers, New Mexico, on April 13, 1922.

56. That before said Albert B. Fall left Washington on April 13, 1922, he gave instructions to his subordinates that no bid should be accepted and no contract should be awarded without his first being

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informed and without his consent thereto being given.

57. That on April 18, 1922, the Acting Secretary of the Interior, Edward C. Finney, communicated by telegraph with said Albert B. Fall, advising that certain officers and employees of the United States named in said telegram recommended the acceptance of Proposal B; that on the same date said Albert B. Fall gave his consent by telegram to the acceptance of Proposal B.

58. That on April 18, 1922, pursuant to the consent and direction of said Albert B. Fall, Edward C. Finney, then Acting Secretary of the Interior, as such, purported to make an award to Pan American Petroleum and Transport Company by transmitting to said Company a letter in the words following:

“DEPARTMENT OF THE INTERIOR,

Washington,

April 18, 1922.

PAN AMERICAN PETROLEUM AND TRANSPORT CO.,

120 Broadway, New York City, N. Y.

Gentlemen: Your bid filed April 15, 1922, for the exchange of Government royalty oils from naval reserves Nos. 1 and 2, California, for fuel oil and storage for naval purposes at Pearl Harbor, Hawaii, has been examined in connection with other bids submitted, and your alternative bid B found to be the lowest and best bid received. Accordingly award is hereby made to you of said contract,

per your alternative bid B. Formal contract is being prepared for execution.

Respectfully,

E. C. FINNEY,

Acting Secretary.

59. That subsequent to the forwarding of the letter mentioned in Finding No. 56, J. J. Cotter, Vice-President of Pan American Petroleum and Transport Company, stated that that Company did not desire to proceed with the making of the contract pursuant to said letter unless the United States would agree that within twelve months from the date of the contract it would grant to the Pan American Petroleum and Transport Company a lease or leases on some portion of the lands lying within [896] the boundaries of naval reserve No. 1, California.

60. That on April 20, 1922, Arthur W. Ambrose, Chief Petroleum technologist of the Bureau of Mines of the Department of the Interior of the United States, was sent with all documents and papers relative to the same to Three Rivers, New Mexico, to consult with the said Albert B. Fall concerning the same. It is not clear whether said Ambrose took with him a draft of the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, in order to show the same to the said Albert B. Fall. It is, however, true that he was instructed to consult the said Fall concerning same.

61. That pending the arrival of said Ambrose at Three Rivers, New Mexico, for consultation with said Albert B. Fall, certain officers and employees

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of the United States were at work in drafting the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint.

62. That on April 23, 1922, said Albert B. Fall, by telegram, advised Edward C. Finney, Acting Secretary of the Interior, that he should go ahead with the contract and should execute the same on behalf of the Department of the Interior.

63. That amongst other matters as to which said Ambrose was instructed to consult said Albert B. Fall on the arrival of said Ambrose at Three Rivers, New Mexico, on or about April 23, 1922, was the question whether said Edwin Denby, as Secretary of the Navy, should be made a party to the proposed agreement to be made with the Pan American Petroleum and Transport Company.

64. That by telegram dated April 23, 1922, said Albert B. Fall consented and agreed that said Edwin Denby should be made a party.

65. That the question whether said Edwin Denby should be made a part to the agreement and whether the Executive Order of May 31, 1921, Exhibit "A" of the amended bill of complaint, had any legal force and effect, was originally raised by J. J. Cotter, Vice-president of and attorney for Pan American Petroleum and Transport Company.

66. That said Cotter refused to permit Pan American Petroleum and Transport Company to enter into said contract unless said Edwin Denby should be made a party to and sign said contract as Secretary of the Navy of the United States.

67. That from the inception of negotiations with

Pan American Petroleum and Transport Company touching a proposed contract for the erection of storage facilities and filling the same with fuel oil at Pearl Harbor, T. H., Albert B. Fall kept in [897] touch with the matter and no matter of policy or action of importance was determined without his consent first had and obtained.

68. That the condition inserted in Proposal "B" by Pan American Petroleum and Transport Company touching a preferential right to leases in naval petroleum reserve No. 1, California, was so inserted with the express purpose on the part of the officers and employees of said Company that no other Company should have an opportunity to obtain leases in said naval petroleum reserve, and so that said Pan American Petroleum and Transport Company should be able to eliminate competition for such leases as the United States might thereafter decide to make.

69. That the guarantee of certain specific leases in the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, was not necessary, nor was it necessary to make the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint, when the same was made, to prevent drainage.

70. That the purpose of the guarantee of certain leases in the letter of April 25, 1922, Exhibit "E" of the amended bill of complaint, was to assure the production of additional royalty oil to be used by the United States as consideration for the construction of storage tankage facilities at Pearl Harbor, T. H., and the filling of the same with fuel oil.

71. That the posted field price of crude oil in California declined rapidly after the making of the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint.

72. That in the autumn of 1922 Pan American Petroleum and Transport Company, and said Edward L. Doheny, were in correspondence and consultation with said Albert B. Fall concerning a proposal that the Pan American Petroleum and Transport Company should at once become lessee of certain areas in naval petroleum reserve No. 1, California, and in consideration thereof should agree to do for the United States the things mentioned in a written proposition. The proposition of Pan American Petroleum and Transport Company to become lessee of certain area in naval petroleum reserve No. 1, California, and to give certain considerations to the United States in consideration of becoming such lessee, was by said Edward L. Doheny reduced to writing and delivered to said Albert B. Fall sometime in October or November, 1922.

73. That said proposition so reduced to writing was delivered by said Albert B. [898] Fall to certain other officers and employees of the United States with his favorable recommendation.

74. That as a result of said proposition said Edward L. Doheny subsequently enlarged the same by a proposition in writing bearing date November 6, 1922, made certain further suggestions with regard to the areas to be leased to Pan American Petroleum and Transport Company, and with re-

gard to the considerations which the Pan American Petroleum and Transport Company would give to the United States for such lease or leases.

75. That as a result of said second proposition of said Edward L. Doheny negotiations were had between certain officers of Pan American Petroleum and Transport Company, or its nominee, Pan American Petroleum Company and certain officers, and employees of the United States, concerning a proposed lease to be granted on lands in naval petroleum reserve No. 1, California.

76. That said Albert B. Fall and said Edward L. Doheny conferred together concerning a schedule of royalties to be inserted in the proposed lease to Pan American Petroleum and Transport Company, or its nominee, Pan American Petroleum Company, with the result that said Albert B. Fall and said Edward L. Doheny agreed upon a schedule of royalties which was the schedule of royalties recommended by said Albert B. Fall and which became the schedule of royalties in the lease to Pan American Petroleum Company, Exhibit "D" of the amended bill of complaint.

77. That said lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, was arranged by private negotiation and no competition of any kind was had in the making thereof. That no other oil company was invited to submit a proposal for such lease, although at least one other oil company would have been interested in the matter.

78. That for some time prior to the making of the lease of December 11, 1922, Exhibit "D" of the

amended bill of complaint, and down to October 25, 1922, said Albert B. Fall and other officers and employees of the United States who were in close touch with him in connection with the administration of the naval petroleum reserves, stated to persons making inquiry for leases in naval petroleum reserve No. 1 in effect that it was not the intention of the Department of the Interior or of the United States to make any leases or to drill in naval reserve No. 1, California, except for purely defensive purposes, and that there was no immediate leasing [899] or drilling in contemplation.

79. That the representations mentioned in Finding No. 78, above, at least so far as said Albert B. Fall was concerned, were false and untrue and known by him so to be.

80. That in February, 1922, an agreement was made by the United States with Pacific Oil Company, which is still in force, whereby no drilling should be done by either party to the agreement, except on six months notice to the other party. This agreement covered the following described lands:

T. 30 S., R. 24 E., M. D. M., Kern County, California; SW. $\frac{1}{4}$ Sec. 27, S. $\frac{1}{2}$ Sec. 28, S. $\frac{1}{2}$ Sec. 29, SE. $\frac{1}{4}$ Sec. 30, E. $\frac{1}{2}$ Sec. 31, all of Sections 32 and 33, W. $\frac{1}{2}$ Sec. 34.

T. 31 S., R. 24 E., M. D. M., Kern County, California; NW. $\frac{1}{4}$ Sec. 3, N. $\frac{1}{2}$ Sec. 4, N. $\frac{1}{2}$ Sec. 5, NE. $\frac{1}{4}$ Sec. 6.

81. That in October, 1922, an agreement was made whereby no drilling was to be done in Section

31 T. 30 S., R. 24 E., M. D. M., and Section 36, T. 30 S., R. 23 E., M. D. M., both said sections in Kern County, California, in naval reserve No. 1. Said agreement is still in force.

82. That there was no necessity, on account of threatened drainage, to make the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, at the time it was made.

83. That at the time of making the contract of December 11, 1922, and the lease of December 11, 1922, Exhibit "C" and "D" of the amended bill of complaint, the plans for the further construction work at Pearl Harbor, T. H., had not been prepared. Said plans were not forwarded by the Navy Department until January 7, 1923.

84. That the contract of April 25, 1922, Exhibit "B" of the amended Bill of Complaint, is a contract for the construction of a reserve fuel depot at Pearl Harbor, T. H., and the filling of the same with fuel oil.

85. That the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, constitutes, *inter alia*, a contract for the erection of two reserve fuel depots for the United States Navy at Pearl Harbor, T. H., and the filling of the same with certain petroleum products.

86. That at the time said Edward L. Doheny made said payment of \$100,000 to said Albert B. Fall, it was understood by said Edward L. Doheny and said Albert B. Fall that said Albert B. Fall need not repay the same or any part thereof in kind to said Edward L. Doheny.

87. That at the time said Edward L. Doheny made said payment of \$100,000 to said [900] Albert B. Fall, said Edward L. Doheny expected that if said Albert B. Fall did not sell or turn over certain ranch land owned by said Albert B. Fall, or to be acquired by him, in New Mexico, said Edward L. Doheny would cause Pan American Petroleum and Transport Company to employ said Albert B. Fall at a salary sufficiently large to enable said Albert B. Fall, out of one-half thereof, to pay off said amount in five or six years.

88. That at the time said Edward L. Doheny made said payment of \$100,000 to said Albert B. Fall, said Edward L. Doheny knew that said Albert B. Fall expected to leave the service of the Government and to accept employment with the Pan American Petroleum and Transport Company or with the Pan American Petroleum Company, or both, through the procurement and good offices of said Edward L. Doheny.

90. That said Edward L. Doheny and said Albert B. Fall did act in co-operation and collusion with respect to the royalties being paid and to be paid on subsequent leases by Pan American Petroleum and Transport Company and its subsidiary, Pan American Petroleum Company, and the royalties fixed in the leases in suit were fixed, arranged and settled by said Fall and said Doheny.

91. That by the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and also by the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, the Secre-

tary of the Navy of the United States of America surrendered and delegated to the Secretary of the Interior of the United States of America vital, essential and discretionary rights, powers and duties which were conferred exclusively and solely upon the said Secretary of the Navy by the Congress of the United States of America.

92. That there has been constructed and completed under the direction of the defendants at Pearl Harbor, Hawaii, all of the fuel oil storage facilities mentioned in the alleged agreement of April 25, 1922, and there has also been constructed and completed under the direction of the defendants at Pearl Harbor, Hawaii, much of the additional storage facilities for crude oil products mentioned in the alleged agreement of December 11, 1922, and that such projects and property are of benefit and value to the United States of America, and have been constructed economically and without waste or extravagance, and are now available for use by the United States of America, and are now located on property of the United States of America [901] at Pearl Harbor, Hawaii, and that the money expended for the construction and completion of said storage facilities for crude oil products at Pearl Harbor, Hawaii, has been expended by defendants upon the property of the United States of America and under the supervision and inspection of the duly appointed officers of the United States Navy, and said property so constructed and completed upon the property of the United States of America at Pearl Harbor, Hawaii, should be retained and kept thereon.

CONCLUSIONS OF LAW.

From the foregoing findings of fact the Court draws the following conclusions of law:

1. That the payment of \$100,000 by Edward L. Doheny to Albert B. Fall, under the circumstances under which said payment was made in this case, was *contra bonos mores* and against public policy.

2. That the question whether the directors and stockholders of Pan American Petroleum and Transport Company knew of said payment is immaterial.

3. That the making of said payment constitutes a fraud upon the United States of America and renders voidable all contracts and transactions made between Pan American Petroleum and Transport Company, or its subsidiary, Pan American Petroleum Company, and the United States of America subsequent thereto.

4. That Edward L. Doheny and Albert B. Fall did conspire and confederate for the making of certain contracts and agreements of great benefit and advantage to the Pan American Petroleum and Transport Company, and pursuant to said confederation and conspiracy there were made the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint; the alleged contract of April 25, 1922, Exhibit "E" of the amended bill of complaint; the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint; the contract of December 11, 1922, Exhibit "C" of the

amended bill of complaint; and the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint.

5. That the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, was not let upon competitive bidding.

6. That the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and the contract of December 11, 1922, Exhibit "C" of the amended bill of [902] complaint, the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint, and the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, are voidable at the option of the United States of America and should be delivered up to be cancelled.

7. That the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, are null, void, and of no effect, because they constitute unlawful delegation of authority to the Secretary of the Interior contrary to the terms and provisions of the Act of June 4, 1920, and the same should be surrendered up by defendant Pan American Petroleum and Transport Company to plaintiff for cancellation.

8. That the executive order of May 31, 1921, issued by Warren G. Harding the President of the United States of America is, in so far as it attempts to transfer a discretionary power to the Secretary of the Navy to the Secretary of the Interior, in-

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effectual and in excess of the executive power of the President of the United States of America.

9. That the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint was part of the consideration of an illegal contract, to wit, the contract of April 25, 1922, Exhibit "B" of the amended bill of complaint, and the same should be delivered up by defendant Pan American Petroleum and Transport Company to be cancelled.

10. That the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, constituted part of the consideration given by the United States of America for the contract of December 11, 1922, Exhibit "C" of the amended bill of complaint, said contract being wholly void and illegal, said lease is likewise void and illegal and should be delivered up for cancellation by the defendant Pan American Petroleum Company.

11. The defendants Pan American Petroleum and Transport Company and Pan American Petroleum Company should cease to trespass upon the lands of the United States of America and should forthwith surrender possession of the lands mentioned in the amended bill of complaint, and all of them, to the United States of America, and said defendants and each of them will be enjoined and restrained from further operations [903] or activities of any kind on any of the lands in controversy in this suit, and will be restrained and enjoined from removing or attempting to remove any materials, tools, machinery, appliances, structures or equipment now upon or within said lands.

12. That the defendants should be paid for and allowed credit for moneys which they have actually expended in the construction of the storage facilities for crude oil products which have been furnished at Pearl Harbor, Hawaii, under the alleged agreement of April 25, 1922, Exhibit "B" of the amended bill of complaint, and under the alleged agreement of December 11, 1922, Exhibit "C" of the amended bill of complaint.

13. That a full, just, true, and complete account should be taken and is hereby ordered to be made between the United States of America and the defendant corporations whereby it should be ascertained what total and gross amount of oil and petroleum products the defendants have produced, taken, extracted, or removed from the lands covered by the lease of June 5, 1922, Exhibit "F" of the amended bill of complaint, and the lease of December 11, 1922, Exhibit "D" of the amended bill of complaint, and the value of lawful money of the United States of America of such oil and petroleum products so produced, taken, extracted or removed; and upon the ascertainment of the total and gross quantity of such oil and petroleum products, and of the pecuniary value thereof, that such sum or sums of lawful money of the United States of America hereafter to be found due, if any, upon such accounting should be paid by the defendants or either of them to the plaintiff. In said accounting the defendants will be entitled to be credited with and shall receive payment for the cost price of the storage facilities for crude oil

products completed and installed at Pearl Harbor, Hawaii, together with the cost price of such fuel oil contents thereof as have been to the date hereof placed within said storage tankage at Pearl Harbor, Hawaii, under the supervision of the officers of the United States of America and of the Navy thereof, and will also be entitled to credit and payment for the actual expenditures of money in drilling and putting on production any wells drilled under the leases of June 5, 1922, and December 11, 1922, to the date hereof and which are now being operated by the receivers herein, and will not be entitled to any further payment or credit on account of any of the transactions in controversy in this action or by reason of any of the contracts and/or leases in suit. A special master in chancery, *pro hac* [904] *vice*, is hereby appointed, and will be hereafter named, to take and make the accounting hereby decreed, and said special master in chancery shall upon completion of said accounting report his findings of fact and conclusions of law to this court for further action by this court in the premises. The Receivers heretofore appointed will continue to operate and control the property in controversy in this case under the order made March 17, 1924, and supplementary thereto until further order herein.

14. That all costs of this suit should be paid by the defendants.

Special counsel and solicitors for plaintiff will prepare a decree pursuant to and in accordance with the foregoing findings of fact and conclusions

of law and present the same under the rules of this court.

Dated this 28th day of May, 1925.

PAUL J. McCORMICK,
United States District Judge. [905]

(Name of Court and Title of Case.)

SUPPLEMENTAL FINDINGS OF FACT.

Filed July 11, 1925. Chas. N. Williams, Clerk.

From the evidence taken in this cause on July 11th, 1925, the Court, in addition to the findings of fact and conclusions of law heretofore filed, dated on the 28th day of May, 1925, finds:

92. That all of the additional storage facilities for crude oil products, mentioned in the alleged agreement of December 11, 1922, referred to in Finding of Fact No. 91, have now been completed.

93. That the said defendant Pan American Petroleum and Transport Company, also in compliance with and performance of the terms of the said alleged agreement of April 25, 1922, delivered into the possession of the United States of America and into the storage facilities at Pearl Harbor, Hawaii, constructed by the said defendant, as aforesaid, 1,453,274.94 barrels of fuel oil of the quality required by the said agreement, and that the said fuel oil was accepted and retained by the United States of America, and is still retained by it, and that the same was and is of a value and benefit to the United States of America, equal to the cost

to the said defendant of furnishing and transporting the same as aforesaid.

94. That the defendant Pan American Petroleum Company, prior to the date at which receivers of this Court took possession of the lands hereinbefore mentioned, in compliance with and performance of the terms of the documents purporting to be the leases of June 5 and December 11, 1922, expended sums of money in [906] exploration, exploitation and development of the said lands, and in producing and maintaining production of oil, gas and gasoline from said lands, and in making other permanent improvements and facilities upon the lands belonging to the plaintiff, necessary to be made in order to comply with and perform the terms of the said alleged leases; that such expenditures were made economically and without waste or extravagance, and with the knowledge and under the general supervision and inspection of the duly appointed officials of the United States of America, and that the results of the expenditure of the said monies as aforesaid is and will be of benefit and value to the United States of America to an extent equal to the amounts of money so expended, as aforesaid.

Dated, this 11th day of July, 1925.

PAUL J. McCORMICK,
United States District Judge. [907]

(Name of Court and Title of Case.)

DECREE.

This cause came on to be heard at this term and

was argued by counsel, and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) That the contract of April 25, 1922, Exhibit "B" of the amended Bill of Complaint, the contract of December 11, 1922, Exhibit "C" of the amended Bill of Complaint, the lease of June 5, 1922, Exhibit "F" of the amended bill of Complaint, and the lease of December 11, 1922, Exhibit "D" of the Amended Bill of Complaint, are voidable at the option of the United States of America, the plaintiff herein, and that the defendant Pan American Petroleum & Transport Company be and is hereby ordered to deliver up to the plaintiff the contracts of April 25 and December 11, 1922, and that the defendant Pan American Petroleum Company be and is ordered to deliver up to the plaintiff the leases of June 5 and December 11, 1922,—all of the foregoing to be cancelled. [908]

(2) That the contract of April 25, 1922, Exhibit "B" of the amended Bill of Complaint, and the contract of December 11, 1922, Exhibit "C" of the amended Bill of Complaint, are null, void and of no effect, and that the defendant Pan American Petroleum & Transport Company be and it is hereby ordered to surrender the same to the plaintiff, the United States of America, for cancellation.

(3) That the lease of June 5th, 1922, Exhibit "F" of the amended Bill of Complaint, constitutes part of the consideration of the illegal contract of April 25, 1922, Exhibit "B" of the amended Bill of Complaint, and that the lease of December 11, 1922,

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Exhibit "D" of the amended Bill of Complaint, constitutes part of the consideration of the illegal contract of December 11, 1922, Exhibit "C" of the amended Bill of Complaint, that they are therefore illegal and void, and that the defendant Pan American Petroleum Company is ordered to deliver the said leases to the United States of America for cancellation.

(4) The defendants, Pan American Petroleum and Transport Company and Pan American Petroleum Company, be restrained from trespassing upon the lands of the plaintiff, the United States of America, which lands are described in the amended Bill of Complaint, and that the said defendant Pan American Petroleum Company forthwith surrender possession of said lands and all of them to plaintiff, United States of America; and that said defendants and each of them be and they each are enjoined and restrained from operations and activities of any kind on any of the lands mentioned in the amended Bill of Complaint, being the lands in controversy in this action; and that said defendant Pan American Petroleum Company be restrained [909] and enjoined from removing or attempting to remove from said lands any materials, tools, machinery, appliances, structures or equipment which are charged to the plaintiff in the account hereinafter stated.

(5) That based upon the testimony offered by the parties and heard in open court, an account is stated between the defendant, Pan American Petroleum & Transport Company, and the plaintiff, as follows:

"A" The said defendant is debited as follows:

1. All royalty oil, gas and gasoline delivered, or caused to be delivered by plaintiff to said defendant under the provisions of said alleged contracts of April 25, 1922 and December 11, 1922, to and including May 31, 1925, viz. :\$ 7,889,759.21

2. Profit derived by said defendant upon resale of said royalty oil, viz. 791,012.03

3. Interest at seven per centum per annum upon item 1 above to May 31, 1925 calculated upon monthly balances, viz. :.... 684,625.55

4. Interest upon item 2 above at seven per centum per annum to said date, calculated upon monthly balances, viz. : 94,351.36

Total \$ 9,459,748.15

"B" The said defendant is entitled to be credited in said account as follows:

1. The actual cost to said defendant of the storage facilities completed and installed at Pearl Harbor, Hawaii, under said alleged contracts of April 25, 1922 and December 11, 1922, and the construction thereof, viz. :.....\$ 7,350,814.11

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2. Interest on item 1 above at seven per centum per annum to May 31, 1925, calculated upon monthly balances, viz. : 820,922.43

[910]

3. The cost price to said defendant of fuel oil delivered to said tanks so as aforesaid constructed by said defendant, viz. : 1,986,142.47

4. Interest on item 3 above at the rate of seven per centum, per annum to May 31st, 1925, calculated on monthly balances, viz. : 259,569.11

Total \$10,417,448.12

Balance due said defendant ... 957,699.97

(6) That based upon the said testimony, an account is stated between the defendant Pan American Petroleum Company and the plaintiff, as follows:

"C" The said defendant is debited as follows:

1. The value of the total amount of oil, gas and other Petroleum products (other than royalty oil, gas and gasoline belonging to the plaintiff and included in the account stated herein between the plaintiff and the defendant Pan American Petroleum & Transport Company) produced, taken and extracted or

removed from the lands covered by the said lease of June 5, 1922, and the said lease of December 11, 1922, to the date of the appointment of and taking possession by the receivers of this Court, viz.: 1,556,861.17

2. Interest on item 1 above at seven per centum per annum, calculated upon monthly balances to May 31st, 1925, viz.: 170,650.02

Total\$ 1,727,511.19

[911]

“D” The said defendant is credited in the said account as follows:

1. The actual expenditures of the said defendant in drilling, putting on production and maintaining and operating production of all wells drilled under said leases of June 5, 1922, and December 11, 1922, and in making any other useful improvement to the property covered by the said leases, to the date of the appointment of and taking possession by the receivers of this Court, viz.: \$ 1,013,428.75

2. The actual expenditures of said defendant in constructing, maintaining and operating the compressor and absorption plant

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on the Northeast Quarter of Section 3-31-24, less the value of the use of same to said defendant in treating products from lands other than those herein in controversy, and less the gasoline manufactured and sold from gas produced from said lands in controversy to May 31, 1925..... 194,991.01

3. Interest on items 1 and 2 above at the rate of seven per centum per annum to May 31, 1925, calculated upon monthly balances, viz.:.....\$ 161,060.43

Total\$ 1,369,480.19

Balance due Plaintiff.....\$ 358,031.00

(7) The Receivers heretofore appointed by this Court in this cause are hereby directed to forthwith pay over to the defendant, Pan American Petroleum & Transport Company, the sum of \$957,699.97, with interest at seven per cent per annum thereon from May 31, 1925, out of funds in their hands in full settlement and discharge of the balance due to the said defendant upon its account, as hereinbefore stated, PROVIDED, HOWEVER, that there shall be credited and deducted from the sum to be paid as aforesaid the value of all royalty oil, gas and gasoline which may have been delivered by the plaintiff to the said defendant under said contracts of April 25, 1922, and December 11, 1922,

since May 31, 1925, with interest thereon at seven per cent per annum.

(8) The defendant, Pan American Petroleum Company, is hereby directed to forthwith pay over to the plaintiff the sum of \$358,031.00 [912] in full settlement and discharge of the balance due to said plaintiff upon the account as hereinbefore stated, with interest at seven per cent per annum from May 31, 1925.

(9) The receivers heretofore appointed by this Court in this cause are hereby discharged from further custody of the lands, matters and things entrusted to their custody by the order of this Court dated March 17, 1924, and are hereby directed

(a) To turn over and surrender possession of all properties in their possession and control to the United States of America or its proper officers, agents, servants, and employees duly designated for this purpose.

(b) To file forthwith in this court an account exhibiting all the items of charge and discharge having to do with their administration of the said property, and showing the balance of money in their hands at the date hereof; and upon the proper vouching and auditing of said account, to pay any balance remaining in their hands (after having made the payment to the defendant, Pan American Petroleum & Transport Company, set forth in paragraph 7 hereof) unto the plaintiff, the United States of America.

(10) It is further ordered and decreed, in order that equity and fair dealing to all persons inter-

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ested in the property in controversy in this suit may be attained under the facts and circumstances of this suit, that the defendants herein shall respectively retain the same credited to them by the terms of clauses 5 and 6 of this decree (less, as to the Pan American Petroleum Company, the sum of \$358,081.00 with interest thereon at 7 per cent per annum from May 31, 1925), and that payment be made to the Pan American Petroleum and Transport Company by the plaintiff of the additional sum of \$957,699.97 with interest thereon at 7 per cent per annum from May 31, 1925, either in the manner herein in paragraph 7 provided, or otherwise. [913]

(11) The defendants shall pay all costs of this suit.

(12) Exceptions are hereby reserved to plaintiff and defendants to each and every finding and conclusion of the Court, and to each and every provision of this decree, adverse to them, respectively.

Dated this 11th day of July, 1925.

(Signed) PAUL J. McCORMICK,
United States District Judge.

Approved as to form as required by Rule 45.

FRANK J. HOGAN,
Solicitor for Defendants.
OWEN J. ROBERTS,
Solicitor for Plaintiff.

Decree entered and recorded July 11, 1925.

CHAS. N. WILLIAMS,
Clerk.

By Louis J. Somers,
Deputy Clerk. [914]

(Name of Court and Title of Case.)

PETITION FOR ALLOWANCE OF APPEAL.

Filed July 15, A. D. 1925, in the District Court of United States for the Southern District of California, Northern Division.

To the Hon. PAUL J. McCORMICK, United States District Judge for the Southern District of California:

The above-named defendants, Pan American Petroleum Company and Pan American Petroleum & Transport Company, feeling themselves aggrieved by the Decree made and entered in this cause on the 11th day of July, A. D. 1925, do hereby appeal, and each of them separately appeals, from said Decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith, and they pray that their appeals be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said Decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security to be required of each of them to severally perfect their appeals be made, and desiring to supercede the execution of the Decree, petitioners here tender bonds in such amounts as the Court may require for such purpose, and

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pray that with the allowance of the appeal a supersedeas be issued.

Dated at Los Angeles, California, July 15, 1925.

CHARLES WELLBORN,
OLIN WELLBORN, Jr.,
JOS. J. COTTER,
HAROLD WALKER,
DEAN EMERY,
FREDERIC R. KELLOGG,
FRANK J. HOGAN,
HENRY W. O'MELVENY,
WALTER K. TULLER,

Solicitors for Defendants-Appellants. [915]

[Endorsed]: No. Equity—B-100-M. In the District Court of the United States, for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. Pan American Petroleum Company, a Corporation, and Pan American Petroleum and Transport Company, a Corporation, Defendants. Petition for Allowance of Appeal.

July 15, 1925.

Notice of the presentation of the within petition and service of a copy thereof is hereby acknowledged.

ATLEE POMERENE,
OWEN J. ROBERTS,
Solicitors for Plff-Appellee. [916]

(Name of Court and Title of Case.)

ASSIGNMENT OF ERRORS.

Now come the defendants in the above-entitled cause, by their attorneys, and say that the Final Decree entered in this cause on the — day of July, 1925, is erroneous and unjust to these defendants and they specify and assign the following as the errors asserted, intended to be urged and upon which they will rely on their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the aforementioned Final Decree entered herein.

The District Court erred on the trial of this cause and in its aforementioned Final Decree entered herein, in the following particulars, to wit:

1. In not adjudging and decreeing upon the pleadings and all the evidence in this cause that the plaintiff's Amended Bill of Complaint be dismissed.

2. In adjudging and decreeing that the contract of April 25, 1922, Exhibit "B" of the Amended Bill of Complaint, the contract of December 11, 1922, Exhibit "C" of the Amended Bill of Complaint, the lease of June 5, 1922, Exhibit "F" of the Amended Bill of Complaint, and the lease of December 11, 1922, Exhibit "D" of the Amended Bill of Complaint, are voidable at the option of the United States of America, the plaintiff in this cause.

3. In ordering Pan American Petroleum & Transport Company to deliver to the plaintiff

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the aforesaid contracts of April 25 and December 11, [917] 1922, to be cancelled.

4. In ordering the defendant Pan American Petroleum Company to deliver to the plaintiff the aforesaid leases of June 5 and December 11, 1922, to be cancelled.

5. In adjudging and decreeing that the aforesaid contracts of April 25, 1922, and December 11, 1922, are null and void.

6. In ordering Pan American Petroleum & Transport Company to surrender the said contracts to the plaintiff, as void, for cancellation.

7. In adjudging and decreeing that the aforesaid leases of June 5, 1922, and December 11, 1922, are illegal and void.

8. In ordering the defendant Pan American Petroleum Company to deliver the aforesaid leases to the United States of America, as void, for cancellation.

9. In enjoining the defendants from going upon the lands of the United States described in plaintiff's Amended Bill of Complaint.

10. In directing the defendant Pan American Petroleum Company to surrender possession of the lands described in the Amended Bill of Complaint to the plaintiff.

11. In enjoining the defendants from carrying on their operations and activities on the lands mentioned in the Amended Bill of Complaint under the aforesaid leases and contracts.

12. In enjoining the defendant Pan American Petroleum Company from moving any of its prop-

erties from the lands held by it under and in virtue of the terms of the aforesaid leases.

13. In stating an account between the plaintiff and the defendants, and each of the defendants, as if the aforesaid contracts and leases were voidable or void and of no effect.

14. In ordering that the defendant Pan American Petroleum & Transport Company account for and pay over to plaintiff profit made by said defendant on resale by it of royalty oil delivered to it by plaintiff in exchange for storage facilities constructed and fuel oil delivered therein at Pearl Harbor, Hawaii, under the aforesaid contracts of April 25 and December 11, 1922, and in ordering said defendant to pay to the plaintiff interest upon the amount of its said profit. [918]

15. In ordering in the final decree in this cause the Receivers theretofore appointed by order of March 17, 1924, to turn over and surrender possession of all property in their possession and control to the plaintiff, and in not charging said Receivers and ordering them to account to and turn over and surrender all property in their possession and control to the defendants.

16. In ordering the said Receivers to pay to the plaintiff any balance of money remaining in their hands after their account is stated, and in not ordering and directing the said Receivers upon approval of their final account to turn over and pay any balance of money remaining in their hands to the defendants.

17. In each and every of its Findings of Fact

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filed in the cause May 28, 1925, and numbered 4, 5, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 61, 62, 63, 64, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90.

18. In each and every of its Conclusions of Law based upon all, or any, of the Findings of Fact as enumerated in the next preceding assignment of error.

19. In each and every of its Conclusions of Law as filed in this cause on May 28, 1925, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14.

20. In failing and refusing to make and enter each and every of its Findings of Fact as requested by the defendants in their requests for findings filed in this cause, by leave of Court, on the 2d day of January, 1925, which said requests for findings are part of the transcript of record on appeal and are numbered 1 to 16, inclusive.

21. In failing and refusing to state and enter in the cause each and every of the Conclusions of Law as duly requested by defendants in their requests filed in the cause, by leave of Court, on the 2d day of January, 1925, said requests being part of the transcript of record on appeal and being numbered 1 to 7, inclusive. [919]

22. In admitting, over objections of defendants, the testimony of the witness Graham Youngs that he learned from some unidentified person in the banking house of Blair & Company, New York

City, on November 30, 1921, that Mr. E. L. Doheny, Jr., required \$100,000.

23. In admitting, over defendants' objections, testimony of the witness Youngs regarding the drawing by Blair & Company on November 30, 1921, of its check on the First National Bank of New York and the cashing by that company of that check at said bank.

24. In admitting, over defendants' objections, Plaintiff's Exhibit No. 35, being check drawn by Blair & Company November 30, 1921, on the First National Bank of the City of New York, payable to the order of that bank, for the sum of \$100,000.

25. In admitting, over defendants' objections, testimony of the witness Youngs that in the office of Blair & Company in New York on November 30, 1921, he cashed a check drawn on the personal account of Mr. and Mrs. E. L. Doheny, Jr., with Blair & Company, for the sum of \$100,000, and delivered to E. L. Doheny, Jr., that sum in currency.

26. In admitting, over the defendants' objections, the testimony of the witness Charles L. Little regarding entries in, withdrawals from, and deposits in, the personal bank account of Mr. and Mrs. E. L. Doheny, Jr., with Blair & Company, New York City, in the months of November and December, 1921, and January, 1922.

27. In admitting, over defendants' objections, Plaintiff's Exhibits 36, 37 and 38, relating to the bank account mentioned in the last preceding as-

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signment of error, and to deposits therein and withdrawals therefrom.

28. In admitting, over defendants' objections, Plaintiff's Exhibit No. 39, being part of a promissory note dated November 30, 1921, payable on demand to the order of E. L. Doheny, for \$100,000, said exhibit being without signature, and the testimony of the witnesses Hill and Mack with respect thereto.

29. In admitting, over defendants' objections, testimony of the witness J. E. Benton regarding (a) the bank account of Albert B. Fall with the First National Bank of El Paso, Texas; (b) deposit in said bank account made [1920] by one C. C. Chase.

30. In admitting, over defendants' objections, Plaintiff's Exhibit No. 41, being a deposit slip showing a deposit made "for Albert B. Fall (by C. C. Chase)," December 7, 1921, in the sum of \$7500, with the First National Bank, El Paso, Texas.

31. In admitting, over defendants' objections, the testimony of the witness Will Ed Harris (a) regarding a transaction had between Albert B. Fall and the witness and others in El Paso, Texas, December 5, 1921, when a contract was made between said parties relating to the purchase of money in New Mexico; (b) regarding deposits made by the witness in his own bank account of money received by him for the sale of property in which he had an interest; (c) regarding payments received by the witness and A. D. Brown-

field by checks in December, 1921, of moneys due said persons from A. B. Fall on account of purchase from the former by the latter of the above mentioned property.

32. In admitting, over defendants' objections, Exhibits 42 and 43 received in connection with and as part of the foregoing testimony of the said Harris.

33. In admitting, over defendants' objection, the testimony of the said witness George D. Flory (a) that the State National Bank, El Paso, Texas, has an account with "Fall and Chase," said witness testifying that said bank neither has nor had any "account of Albert B. Fall," although it also had, in addition to the account of "Fall and Chase," "an account in the name of C. C. Chase"; (b) regarding the account in said State National Bank of C. C. Chase and deposits made therein and withdrawals made therefrom; (c) Plaintiff's Exhibit 44, being a deposit slip dated December 7, 1921, showing a deposit by C. C. Chase in the personal account of C. C. Chase at the said State National Bank.

34. In admitting, over defendants' objection, the testimony of the said witness Flory (a) that there was opened in said bank on December 28, 1921, an account in the name of Fall and Chase; (b) regarding deposits made in said account of Fall and Chase by transfer from the aforesaid account of C. C. Chase and directly. [921]

35. In admitting, over defendants' objection, Plaintiff's Exhibit No. 45, being a deposit slip

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showing that there was deposited in the account of Fall and Chase on December 28, 1921, the sum of \$36,200.

36. In admitting, over defendants' objection, the testimony of the said witness Flory regarding withdrawals from and deposits in the said account of Fall and Chase.

37. In admitting, over defendants' objection, testimony of the witness W. J. McInnes regarding the accounts of Harris and Brownfield; Will Ed Harris, Executor; and A. D. Brownfield and Mrs. Brownfield, with the American National Bank and Citizens National Bank of Roswell, New Mexico.

38. In admitting, over defendants' objections, Exhibits Nos. 46, 47 and 48 offered and received in connection with the testimony of the said witness McInnes made the subject of the last preceding assignment of error.

39. In admitting, over defendants' objection, testimony of the witness A. D. Brownfield regarding transactions had by him with A. B. Fall and C. C. Chase, and moneys received by him and deposits made by him in his personal bank account.

40. In admitting, over defendants' objection, testimony of the witness Carrie Estelle Doheny, regarding statements made to her by her husband, relating to a loan which her husband, E. L. Doheny, told her he had made Albert B. Fall; regarding her said husband's exhibition to her of a promissory note which he said he had received from Albert B. Fall for said loan; and regarding the separating of the body of the note and the signature.

41. In admitting in evidence, over defendants' objections, the statements recorded in the record of "Hearings Before the Committee on Public Lands and Surveys, United States Senate, Sixty-eighth Congress, First Session," on the subject of "Leases upon Naval Oil Reserves," to have been made before said Committee, on January 24, 1924, and February 1, 1924, by Edward L. Doheny, voluntarily appearing in person before said Committee, during which it is reported that the said Doheny stated that he made a personal loan of the sum of \$100,000 on November 30, 1921, to Albert B. Fall, a long-time friend of said Doheny's, in the circumstances and for the purposes reported to have been stated to said Senate Committee by said Doheny, all as set out in detail in [922] said report of the Senate Committee Hearings.

42. In admitting, over defendants' objection, letter dated January 24, 1924, addressed to "The Committee on Public Lands and Surveys, United States Senate, Washington, D. C.," and signed "Gavin McNab, Attorney for Mr. Doheny."

43. In admitting, over defendants' objections, Plaintiff's Exhibits 49 and 50, being transcript of stenographer's report of the aforesaid Senate Committee Hearings of January 24, 1924, and February 1, 1924, respectively, and the contents thereof, being report of statements made before said Committee by Edward L. Doheny, referred to in assignment of error numbered 41 above, and containing also copy of the letter the admission of which is made the subject of the last preceding assignment of error.

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(This assignment goes to the relevancy, materiality, competency and admissibility against the corporate defendants of the said exhibits and the matter referred to in the two last preceding assignments, and not to the medium of proof.)

44. In admitting, over defendants' objection, Plaintiff's Exhibit No. 51, being paper dated January 27, 1922, addressed "Mr. H. M. Storey, Vice-President, Building," and signed "Oscar Sutro," being latter's opinion rendered to the Standard Oil Company, as its counsel, relating to the legal right of the United States, under then existing laws, to enter into contracts of the nature of those involved in this suit.

45. In admitting, over defendants' objection, testimony of the witness Sutro regarding conversations and discussions with E. C. Finney, First Assistant Secretary of the Interior of the United States, on the subject referred to in the last preceding assignment of error.

46. In admitting, over defendants' objection, Plaintiff's Exhibit No. 55, being letter from B. T. Dyer, for American Oil Engineering Corporation, dated San Francisco, California, August 27, 1921, addressed "To the Honorable Secretary of the Interior, A. B. Falls," and relating to a proposition of said company to operate plaintiff's naval petroleum reserves.

47. In admitting, over defendants' objections, Plaintiff's Exhibits 15, 16, 17, 18, 19, 20, 21, and 22, being, respectively, letters from A. D'Heur [923] to "Lieutenant Commander Landis, U. S. Navy, Post

Office Building, San Francisco, Calif.," dated June 13, 1921; from Lieutenant Commander Landis to The Secretary of the Navy, dated June 22, 1921; from Edwin Denby to Hon. Albert B. Fall, dated June 28, 1921; from Albert B. Fall to Hon. Edwin Denby, dated July 1, 1921; from "Geo. Otis Smith, Director," "Memorandum for Mr. Safford," dated July 7, 1921; to "Mr. A. D'Heur, Vice-President, Pacific Oil Company, San Francisco, California," containing at the foot thereof the notation: "To Secretary, Jul. 7, 1921, for signature G. O. S."; from "Albert B. Fall, Secretary," to Mr. D'Heur, dated July 18, 1921; from Mr. D'Heur to Honorable Albert B. Fall, dated July 26, 1921, being correspondence in no way connected with or brought home to the defendants or either of them.

48. In admitting, over defendants' objection, the testimony of the witness A. L. Weil, relating to his opinion, and the expression thereof, as a lawyer, on the subject of the authority, under the law as it then stood, of the United States in 1922 to enter into contracts of the nature involved in this case.

49. In admitting, over defendants' objections, Exhibits 172 to 236, inclusive, the same consisting of correspondence between officials of the United States and applicants for leases to selected and specified portions of lands in the plaintiff's naval petroleum reserves, and for the award of leases to lands in said reserves, none of which was written by, to, or related to, or was in any way connected with, the defendants in this case; and particularly in admitting papers among said exhibits

not addressed to, not shown to have come to the attention of, and not having been acted upon or written by, the said Albert B. Fall.

50. In overruling each and every motion, separately submitted, to strike out, at the close of all the testimony, the evidence theretofore admitted, over objections of defendants, and referred to in the foregoing assignments of error numbered 22 to 49, inclusive.

51. In other respects apparent of record. [924]

WHEREFORE these defendants-appellants pray that the aforementioned Final Decree of the United States District Court for the Southern District of California, Northern Division, made and entered herein on the — day of July, 1925, sustaining the Plaintiff's Amended Bill, may be reversed and that this cause may be remanded to the said District Court with directions to enter a decree dismissing the plaintiff's said bill, or in such other form as to the said Circuit Court of Appeals for the Ninth Circuit shall seem just.

Dated at Los Angeles, California, July —, 1925.

PAN AMERICAN PETROLEUM COMPANY.

PAN AMERICAN PETROLEUM & TRANSPORT COMPANY.

By CHARLES WELLBORN,
OLIN WELLBORN, Jr.,
JOS. J. COTTER,
HAROLD WALKER,
DEAN EMERY,
HENRY W. O'MELVENY,

WALKER K. TULLER,
FREDERIC R. KELLOGG,
FRANK J. HOGAN,

Attorneys for Defendants-Appellants. [925]

(Name of Court and Title of Case.)

ORDER ALLOWING APPEAL.

In the above-entitled cause the defendants above named, having duly filed their petition for an order allowing them to prosecute an appeal from the Final Decree of this Court, made and entered herein on the 11th day of July, 1925, and having also duly filed their Assignments of Errors.

Now, on motion of Frank J. Hogan, Esquire, solicitor for the above-named defendants, it is

ORDERED, that such appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed to the above-named defendants, and each of them, from the aforementioned Final Decree in this suit entered on the said 11th day of July, 1925. And it is further

ORDERED, that upon the execution by the defendant Pan American Petroleum Company, with approved surety, of a bond in the penalty of Three Hundred and Seventy-five Thousand Dollars (\$375,000.00) and upon the execution by the defendant Pan American Petroleum & Transport Company of a bond, with approved surety, in the penalty of Five Thousand Dollars (\$5000.00), said appeal shall operate as a supersedeas of said Decree and shall suspend the execution thereof until Final Decree on appeal herein. And it is further

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ORDERED, that upon the filing of the said supersedeas bonds a certified transcript of the record and proceedings in this suit, including the statement of the evidence as approved by this Court, be transmitted to and filed in the United States Circuit Court of Appeals for the Ninth Circuit in accordance with the Statutes and the Equity Rules of the Supreme Court of the United States.

Dated at Los Angeles this 15th day of July, 1925.

PAUL J. McCORMICK,

United States District Judge.

(Name of Court and Title of Case).

July 15, 1925.

Service of notice of presentation of the within order acknowledged.

OWEN J. ROBERTS,

SAMUEL W. McNABB,

Solicitors for Plff.-Appellant. [926]

(Name of Court and Title of Case.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Pan American Petroleum Company, a corporation, as principal, and National Surety Company, a corporation, as surety, acknowledge ourselves to be jointly indebted to the United States of America, appellee in the above cause, in the sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), conditioned that, whereas, on the 11th day of July, A. D. 1925, in the District Court of the United States for the Southern District of California, Northern Division, in a suit depending in

that court, wherein the United States of America was plaintiff and Pan American Petroleum Company, and another, were defendants, numbered on the equity docket as B-100-M, a decree was rendered against the said Pan American Petroleum Company, and the said Pan American Petroleum Company having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, on the 13th day of August, A. D. 1925, next.

Now, if the said Pan American Petroleum Company shall prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force [927] and virtue.

PAN AMERICAN PETROLEUM COMPANY,

By H. ANDERSON,
President.

NATIONAL SURETY COMPANY,

[Seal]

By GEO. D. MANN,
Its Attorney-in-Fact.

Approved July 15, 1925.

(Signed) PAUL J. McCORMICK,
United States District Judge, Southern District of
California.

State of California,
County of Los Angeles,—ss.

On this 15 day of July, in the year one thousand nine hundred and 25, before me, Nadine Girard, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Geo. D. Marcy, known to me to be the duly authorized attorney-in-fact of National Surety Company, and the same person whose name is subscribed to the within instrument as the attorney-in-fact of said Company, and the said Geo. D. Marcy acknowledged to me that he subscribed the name of National Surety Company thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] NADINE GIRARD,
Notary Public in and for Los Angeles County, State
of California.

State of California,
County of Los Angeles,—ss.

On this fifteenth day of July, in the year one thousand nine hundred and twenty-five, before me Robert A. Etie, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. C. Anderson, known to me to be President of Pan American Petroleum Company, and the same person whose name is subscribed to the within instrument as the President of said Company, and the said J. C. An-

derson acknowledged to me that he subscribed the name of said Company thereto as principal and his own named as President thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

ROBERT A. ETIE,

Notary Public in and for Los Angeles County, State of California. [928]

(Name of Court and Title of Case.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we, Pan American Petroleum & Transport Company, a corporation, as principal, and National Surety Company, a corporation, as surety, acknowledge ourselves to be jointly indebted to the United States of America, appellee in the above cause, in the sum of Five Thousand Dollars (\$5000.00) conditioned that, whereas, on the 11th day of July, A. D. 1925, in the District Court of the United States for the Southern District of California, Northern Division, in a suit depending in that court, wherein the United States of America was plaintiff and Pan American Petroleum & Transport Company, and another, were defendants, numbered on the equity docket as B-100-M, a decree was rendered against the said Pan American Petroleum & Transport Company, and the said Pan American Petroleum & Transport Company having obtained an appeal to the United States Circuit Court of Ap-

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peals for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, on the 13th day of August, A. D. 1925, next.

Now, if the said Pan American Petroleum & Transport Company shall [929] prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

PAN AMERICAN PETROLEUM &
TRANSPORT COMPANY.

By JOS. J. COTTER,
Vice-President.

NATIONAL SURETY COMPANY.

[Seal]

By GEO. D. MARCY,
Its Attorney-in-Fact.

Approved July 15, 1925.

(Signed) PAUL J. McCORMICK,
United States District Judge, Southern District of
California.

State of California,
County of Los Angeles,—ss.

On this 15 day of July in the year one thousand
nine hundred and 25, before me, Nadine Girard, a

notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Geo. D. Marcy, known to me to be the duly authorized attorney-in-fact of National Surety Company, and the same person whose name is subscribed to the within instrument as the attorney-in-fact of said company, and the same Geo. D. Marcy acknowledged to me that he subscribed the name of National Surety Company thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

NADINE GIRARD,

Notary Public in and for Los Angeles County, State of California.

State of California,
County of Los Angeles,—ss.

On this fifteenth day of July in the year one thousand nine hundred and twenty-five, before me, Robert A. Etie, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Jos. J. Cotter, known to me to be Vice-president of Pan American Petroleum & Transport Company, and the same person whose name is subscribed to the within instrument as the Vice-president of said Company, and the said Jos. J. Cotter acknowledged to me that he subscribed the name of said Company thereto as principal and his own name as Vice-president thereof.

In witness whereof, I have hereunto set my hand

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and affixed my official seal the day and year in this certificate first above written.

[Seal]

ROBERT A. ETIE,
Notary Public in and for Los Angeles County, State
of California. [930]

(Name of Court and Title of Case.)

PETITION FOR ALLOWANCE OF CROSS-
APPEAL.

To the Honorable the Judges of the Said Court:

The United States of America, the above-named plaintiff, conceiving itself aggrieved by the final decree in the above-entitled cause in so far as the same allows the defendants the credits in the account in said decree set forth, does hereby petition for a cross-appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit; and prays that its cross-appeal may be allowed, and that a transcript of such part of the record, papers and proceedings upon which said decree was made, as the parties to this cause shall by praecipe duly indicate, may be sent, duly authenticated, to the said United States Circuit Court of Appeals.

And it will ever pray, etc.

ATLEE POMERENE,
OWEN J. ROBERTS,
Special Counsel.

S. W. McNABB,
U. S. District Attorney,
Solicitors for Plaintiff, the United States of
America. [931]

Service of above petition for allowance of a cross-appeal is hereby accepted and acknowledged this 15th day of July, A. D. 1925.

FREDERICK R. KELLOGG,
FRANK J. HOGAN,
Solicitors for the Defendants. [932]

DECREE.

AND NOW, to wit, July 15th, 1925, the prayer of the foregoing petition is granted, and a cross-appeal is this day allowed to the United States Circuit Court of Appeals for the Ninth Circuit.

PAUL J. McCORMICK,
United States District Judge.

Attest: _____,
Clerk of the Court. [933]

(Name of Court and Title of Case.)

ASSIGNMENT OF ERRORS OF UNITED
STATES ON CROSS-APPEAL.

Now comes the plaintiff in the above-entitled cause, by its attorneys, and says that the Final Decree entered in this cause on the 11th day of July, 1925, is erroneous and unjust to the plaintiff and it specifies and assigns the following as the errors asserted, intended to be urged and upon which it will rely on its cross-appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the aforementioned Final Decree entered herein.

The District Court erred on the trial of this cause

and in its aforementioned Final Decree entered herein, in the following particulars, to wit:

1. In its twelfth conclusion of law, which was as follows:

“12. That the defendants should be paid for and allowed credit for moneys which they have actually expended in the construction of the storage facilities for crude oil products which have been furnished at Pearl Harbor, Hawaii, under the alleged agreement of April 25, 1922, Exhibit ‘B’ of the amended bill of complaint, and under the alleged agreement of December 11, 1922, Exhibit ‘C’ of the amended bill of complaint.”

2. In so much of its thirteenth conclusion of law as provides

“In said accounting the defendants will be entitled to be credited with and shall receive payment for the cost price of the storage facilities for crude oil products completed and installed at Pearl Harbor, Hawaii, together with the cost price of such fuel oil contents thereof as have been to the date hereof [934] placed within said storage tankage at Pearl Harbor, Hawaii, under the supervision of officers of the United States of America, and of the navy thereof, and will also be entitled to credit and payment for the actual expenditures of money in drilling and putting on production any wells drilled under the leases of June 5, 1922, and December 11, 1922, to the date hereof, and which

are now being operated by the receivers herein.”

* * *

3. In the final decree entered herein in allowing to defendant Pan American Petroleum and Transport Company credits in the account stated in paragraph (5) of said decree as follows:

1. The actual cost to said defendant of the storage facilities completed and installed at Pearlbor, Hawaii, under said alleged contracts of April 25, 1922, and December 11, 1922, and the construction thereof, viz.:\$7,350,814.11
2. Interest on item 1 above at seven per centum per annum to May 31st, 1925, calculated upon monthly balances, viz.:\$ 820,922.43

4. In the final decree entered herein in allowing to defendant Pan American Petroleum Company credits in the account stated in paragraph (6) of said decree as follows:

1. The actual expenditures of the said defendant in drilling, putting on production and maintaining and operating production of all wells drilled under said leases of June 5, 1922 and December 11, 1922, and in making any other useful improvement to the property covered by the said leases, to the date of the appointment of and

taking possession by the receivers of this Court, viz.: \$1,013,428.75

2. The actual expenditures of said defendant in constructing, maintaining and operating the compressor and absorption plant on the Northeast Quarter, Section 3-31-24, less the value of the use of same to said defendant in treating products from lands other than those herein in controversy, and less the gasoline manufactured and sold from gas produced from said lands in controversy to May 31, 1925.....\$ 194,991.01
3. Interest on items 1 and 2 above at the rate of seven per centum per annum to May 31, 1925, calculated upon monthly balances, viz.: \$ 161,060.43
[935]

5. In the final decree entered herein in paragraph (10) thereof which is as follows:

“(10) It is further ordered and decreed in order that equity and fair dealing to all persons interested in the property in controversy in this suit may be attained under the facts and circumstances of this suit, that the defendants herein shall respectively retain the sums credited to them for the terms of clauses 5 and 6 of this decree (less as to the Pan American Petroleum Company, the sum of \$358,031.00,

with interest thereon at seven per centum per annum from May 31, 1925), and that payment be made to the Pan American Petroleum and Transport Company by the plaintiff of the additional sum of \$957,699.97 with interest thereon at seven per centum per annum from May 31, 1925, either in the manner herein in paragraph (7) provided, or otherwise."

WHEREFORE the plaintiff (cross-appellant) prays that the aforementioned Final Decree of the United States District Court for the Southern District of California, Northern Division, made and entered herein on the 11th day of July, 1925, be so modified as to disallow the credits therein granted to each of the defendants and so as to increase correspondingly the amounts awarded to the plaintiff therein, and that this cause may be remanded to the said District Court with directions to enter an amended decree accordingly, or in such other form as to the said Circuit Court of Appeals for the Ninth Circuit shall seem just.

Dated at Los Angeles, California, July 14th, 1925.

THE UNITED STATES OF AMERICA.

By ATLEE POMERENE,

OWEN J. ROBERTS,

Attorneys for Plaintiff (Cross-Appellant). [936]

(Name of Court and Title of Case.)

PRAECIPE DESIGNATING RECORD ON AP-
PEAL.

The Pan American Petroleum Company and Pan

American Petroleum Transport Company, defendants-appellants in the above-entitled cause, hereby designate the following portions of the record therein to be incorporated into the transcript on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit in this case:

1. Memorandum of fact that original bill of complaint was filed by plaintiff on March 17, 1924.

2. Memorandum that on March 17, 1924, defendants accepted service and entered their appearance in the cause.

3. Memorandum that there was filed in the cause on March 17, 1924, stipulation of the parties transferring the cause for hearing to Los Angeles, California, in the Southern Division of this Court with same force and effect as if heard in Northern Division.

4. Memorandum that on March 17, 1924, the Court duly appointed H. H. Rousseau and J. Crampton Anderson receivers to take possession, hold and operate, *pendente lite*, the properties located in the State of California, in controversy in this suit.

5. Memorandum that on March 24, 1924, the said receivers duly qualified by filing bonds as required by the Court and entered upon their duties.

6. Memorandum that on April 15, 1924, time for defendants to plead was extended. [937]

7. Memorandum that on April 22, 1924, order was entered granting plaintiff leave to file amended bill of complaint.

8. The amended bill of complaint filed April 22, 1924.

9. The answer of the defendants to the amended bill of complaint filed May 8, 1924.

10. Certificate of the clerk giving names and addresses of all witnesses served with subpoenas issued upon orders of plaintiff and defendants, showing date of service in each instance.

11. Notice to solicitors for plaintiff from solicitors for defendants of lodgment in the office of the clerk of statement of evidence, together with acknowledgment of service and waiver therein contained, filed July 15, 1925

12. Statement of evidence lodged in the office of the clerk of this court by solicitors for defendants-appellants, July 15, 1925, together with consent of plaintiff's solicitors to approval, and Court's certificate of approval.

13. Plaintiff's request for findings of fact and conclusions of law filed December 17, 1924.

14. Defendants' request for findings of fact and conclusions of law filed January 2, 1925.

15. Memorandum opinion of Court, filed May 28, 1925.

16. The Court's findings of fact and conclusions of law, filed May 28, 1925, and July 11, 1925.

17. Final decree entered July 11, 1925.

18. Petition for appeal filed by defendants July 15, 1925, with assignment of errors accompanying the same.

19. Order allowing appeal in fixing penalties of supersedeas bonds, entered July 15, 1925.

20. Defendants'-appellants' supersedeas bonds on appeal filed and approved July 15, 1925.

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21. Citation on appeal issued July 15, 1925, and acknowledgment of solicitors for plaintiff-appellee, dated July 15, 1925. [938]

22. This praecipe filed by defendants designating matters to be incorporated in record, filed July 15, 1925.

23. Clerk's certificate.

Dated at Los Angeles, California, this 15th day of July, 1925.

CHARLES WELLBORN,
OLIN WELLBORN, Jr.,
CW.

J. J. COTTER,
HAROLD WALKER,
DEAN EMERY,
FREDERIC R. KELLOGG,
HENRY W. O'MELVENY,
WALTER K. TULLER,
K.

FRANK J. HOGAN,

Solicitors for Pan American Petroleum Company
and Pan American Petroleum & Transport
Company, Defendants-Appellants.

Service of copy of the foregoing praecipe indicating portions of the record to be incorporated into the transcript on the appeal of defendants in the above-entitled cause is hereby acknowledged at Los Angeles, California, this 15th day of July, 1925, and the said designation on the appeal of defendants being satisfactory and complete, the plaintiff-appellee, hereby waives the period of ten days allowed

by the rules within which to file counter designation.

Dated at Los Angeles, California, this 15th day of July, 1925.

ATLEE POMERENE,
OWEN J. ROBERTS,
S. W. McNABB,

Solicitors for the United States of America, Plaintiff-Appellee. [939]

(Name of Court and Title of Case.)

PRAECIPE OF CROSS-APPELLANT DESIGNATING RECORD ON APPEAL.

To the Clerk of the said Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to a cross-appeal allowed to the plaintiff, the United States of America, in the above-entitled cause and to include in such transcript the following portions of the record, namely:

1. Petition of the United States for allowance of cross-appeal.
2. Order allowing cross-appeal.
3. Assignment of errors of the United States as cross-appeal.
4. This praecipe.

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5. Citation on cross-appeal of the United States.

ATLEE POMERENE,

OWEN J. ROBERTS,

Special Counsel for the United States,

S. W. McNABB,

United States District Attorney,

Solicitors for Plaintiff, the United States of
America, Cross-Appellant.

Service of above praecipe accepted and acknowledged this 15th day of July, A. D. 1925.

FREDERIC R. KELLOGG,

FRANK J. HOGAN,

Solicitors for the Defendants-Cross-Appellees.

[940]

In the District Court of the United States, in and
for the Southern District of California, North-
ern Division.

No. B-100-M—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM & TRANSPORT COMPANY,
a Corporation,

Defendants.

**CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.**

I, Chas. N. Williams, Clerk of the District Court of the United States of America, for the Southern District of California, do hereby certify the foregoing typewritten and printed pages, including five photostat copies of exhibits, numbered from 1 to 940, inclusive, to be full, true and correct copies of the following:

Amended bill of complaint;

The answer of the defendants to the amended bill of complaint;

Certificate of names and addresses of all witnesses served with subpoenas issued upon orders of plaintiff and defendants, showing dates of service in each instance;

Notice of lodging in the clerk's office by defendants-appellants of statement of evidence;

Statement of Evidence under Equity Rule 75 (b);

Plaintiff's request for findings of fact and conclusions of law;

Defendants' request for findings of fact and conclusions of law;

Memorandum opinion of Court;

Findings of fact and conclusions of law;

Supplemental findings of fact and conclusions of law;

Decree;

Petition for appeal;

Assignment of errors;

Order allowing appeal;

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Bonds on appeal;

Petition of the United States for allowance of cross-appeal; and

Order allowing cross-appeal;

Assignment of errors of the United States as cross-appellant;

Defendants'-appellants' praecipe for transcript on appeal; and

Praecipe of cross-appellant,—

—and that the same constitute the Transcript of Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit in said cause. Said record also contains the original citations.

I DO FURTHER CERTIFY that the fees of the clerk for comparing, correcting and certifying the foregoing record on appeal amount to \$136.40, and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this 29th day of July, in the year of our Lord one thousand nine hundred and twenty-five, and of our Independence the one hundred and fiftieth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R. S. Zimmerman,

Deputy.

[Endorsed]: No. 4651. United States Circuit Court of Appeals for the Ninth Circuit. Pan American Petroleum Company, a Corporation, and Pan American Petroleum and Transport Company, a Corporation, Appellants and Cross-Appellees, vs. United States of America, Appellee and Cross-Appellant. Transcript of Record. Upon Appeal and Cross-Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed July 31, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Volumes I, II and III. Filed August 20, 1925. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4651

United States
Circuit Court of Appeals
For the Ninth Circuit.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM AND TRANSPORT COM-
PANY, a Corporation,
Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

Upon Appeal and Cross-Appeal from the United States
District Court for the Southern District of
California, Northern Division.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifth day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge, Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY,
a Corporation, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY,
a Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

ORDER ON HEARING.

ORDERED appeal and cross-appeal in above-entitled cause argued by Mr. Owen J. Roberts, Special Counsel, counsel for the United States, of America, Appellee and Cross-Appellant, and by Mr. Frank J. Hogan, counsel for the Appellants and Cross-Appellees, and continued to tomorrow for further argument.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the sixth day of October, in the year of our Lord one thousand, nine hundred and twenty-five. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge, Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY,
a Corporation, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY,
a Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

ORDER OF SUBMISSION.

ORDERED appeal and cross-appeal in above-entitled cause further argued by Messrs. Frank J. Hogan and Frederic R. Kellogg, counsel for the Appellants and Cross-Appellees, and Mr. Atlee Pomerene, Special Counsel for the United States of America, Appellee and Cross-Appellant, and

submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourth day of January, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY,
a Corporation, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY,
a Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF DECREE.

By direction of the Honorable William B. Gilbert, William H. Hunt and Frank H. Rudkin, Circuit Judges, before whom the cause was heard, OR-

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DERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of the court in said cause in accordance with the said opinion.

In the United States Circuit Court of Appeals,
for the Ninth Circuit.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY,
a Corporation, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY,
a Corporation,

Appellants and Cross-Appellees,
vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

The United States in a bill in equity against the two corporations named as parties defendant—which herein will be called respectively the Petroleum Company and the Transport Company—alleged that a fraudulent conspiracy was formed between Edward L. Doheny, the chief executive officer of the defendants, and Albert B. Fall, Sec-

retary of the Interior of the United States, to procure for the defendant companies the execution of a contract dated April 25, 1922, a lease of a portion of Naval Reserve No. 1, situated in California, a further contract of December 11, 1922, and a lease for 20 years covering the remainder of Naval Reserve No. 1, dated December 11, 1922. The object of the suit was to rescind and cancel said contracts and leases and obtain a decree for accounting. The bill alleged that between said conspirators an agreement was made prior to November 30, 1921, that if Secretary Fall could bring about the execution of said instruments he was to receive for so doing one hundred thousand dollars from Edward L. Doheny; that on or about November 30, 1921, Doheny, in furtherance of said conspiracy, paid Fall the \$100,000 reward so promised him, and that thereafter Fall in pursuance of said conspiracy awarded the said contract of April 25, and caused to be executed and delivered the said lease of June 5, and caused the said contract and lease of December 11 to be executed. The bill alleged that by the contract of April 25, 1922, made between the Transport Company and the United States by the Acting Secretary of the Interior, it was agreed to exchange crude oil to be produced from Naval Petroleum Reserves Nos. 1 and 2 in the State of California, which oil was unsuitable for fuel for the United States Navy, for fuel oil suitable for the use of said Navy to be delivered by the corporation at the United States Naval Station at Pearl Harbor, Hawaii, the cor-

poration agreeing to furnish 1,500,000 barrels of fuel oil and to deliver the same into storage facilities to be by it constructed according to specifications in consideration of the delivery to the corporation of 5,878,905 barrels of crude oil from said naval reserves, with a further provision that the corporation should be granted by the Government a preferential lease on certain portions of Reserve No. 1 not included in the contract in case the Secretary should decide to lease the same. It was alleged also that the said award of the contract to the Transport Company was made without competitive bidding and that it gave to said corporation a prior right or option to become the lessee of certain portions of Naval Reserve No. 1, and was so drawn purposely and intentionally to secure said right to that corporation to the detriment and in fraud of the rights of the United States and to prevent other persons or corporations from becoming the lessee and to prevent competitive bidding or open competition to any lease on lands in said reserve; that the intention between Fall and Doheny was that the latter's company should become the lessee of the entire reserve; that pursuant to the said unlawful agreement the instruments of April 25, 1922, and December 11, 1922, were executed secretly and privately and without competition and that all the agreements and leases referred to in the bill are illegal and void by reason of said fraud and illegal conspiracy and for the further reason that no authority was lodged

in the officers of the United States who acted therein to execute the same and that they were unauthorized by law. The prayer of the bill was in substance that the contracts and leases be surrendered to be cancelled, that the defendants be enjoined from further trespassing upon the lands of the United States under or by virtue of said instruments, and that the defendants be required to account for all oil received or taken by them under the terms of said instruments.

The answer denied the allegations of fraud, conspiracy and bribery, asserted the validity and legality of the contracts and leases, and alleged in defense that the plaintiff had not tendered to the defendants the amount which they were justly and equitably entitled to receive under said contracts and leases, and had failed to offer to do equity in the premises, and alleged that the bill was without equity.

In substance the findings of fact of the Trial Court are that the Transport Company, a corporation of which Edward L. Doheny was president up to December 7, 1923, owned and absolutely controlled the entire capital stock of its codefendant; and that at all times mentioned in the complaint Doheny directly or indirectly controlled over 50 per cent of the capital stock of the Transport Company and was in fact in effective control of the policies and actions of both said companies. On September 2, 1912, the President made an executive order setting apart a portion of the lands

in Petroleum Reserve No. 2, ordering that they should be held for the exclusive use or benefit of the United States Navy, and on May 31, 1921, President Harding made an executive order authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserves and to permit the drilling of additional wells or to lease the remainder or any part of a claim upon which such wells had been drilled, and directing the Secretary of the Navy to conserve, develop, use and operate by contract, lease or otherwise, unappropriated lands in naval reserves, and committing to the Secretary of the Interior the administration and conservation of oil and gas bearing lands in the Naval Reserves, but providing that no general policy as to drilling or reserving lands in a naval reserve should be changed or adopted except in consultation and co-operation with the Secretary or Acting Secretary of the Navy. The order authorized and directed the Secretary of the Interior to perform any and all acts necessary for the production, conservation and administration of the said reserves subject to the conditions and limitations contained in the order and the existing laws, or such laws as might hereafter be enacted by Congress pertaining thereto. Secretary Fall was very active in procuring the transfer of the naval oil reserves from the Navy Department to the Interior and after the order of May 31, 1921, he dominated the negotiations that eventuated in the contracts and leases in the suit. The Secretary of the Navy was absent

through all said negotiations and took no active part therein but signed the contracts of April 25, 1922, and December 11, 1922, and the lease of December 11, 1922, and the letter of April 25, 1922, under misapprehension and without full knowledge of the contents thereof. On July 8, 1921, Fall wrote to Doheny: "There will be no possibility of any further conflict with naval officials and this department, as I have notified Mr. Denby that I should conduct the matter of naval leases under the direction of the President without calling any of his force in consultation, unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle the matter exactly as I think best, and will not consult with any officials of any bureau in his department but only with himself, and such consultation will be confined strictly and entirely to matters of general policy." Doheny and the defendants understood from and after July 8, 1921, and acted upon the belief, that Fall had authority to make contracts and leases touching royalty oils from land of the naval reserve and they dealt with him accordingly. Between July 8, 1921, and October 25, 1921, Fall and Doheny held personal conferences with regard to the royalties reserved under a lease that had been granted to the Petroleum Company for a strip of land in Section 1, Township 31 South, Range 24 East, in Kern County, California, and between the same dates they held conferences respecting the proposal to be made by the Transport Company

whereby the latter should receive from the United States royalty oil accruing from leases on Naval Reserves No. 1 and No. 2 in California, and in consideration thereof agreed to erect certain storage tank facilities at Pearl Harbor, Hawaii, and fill the same with fuel oil. At said conferences the matter of granting further leases on Naval Reserve No. 1 was discussed and on October 25, 1921, and prior to March 7, 1922, Fall and Admiral John K. Robison, the personal representative of the Secretary of the Navy in naval reserve matters, agreed that the proposed contract for the construction of tankage facilities and filling the same should be kept secret, not for military reasons but in order that Congress and the public might not know what was being done, and in fact the proposed contract was concealed and kept secret until after the award was made on April 18, 1922. At and prior to November 30, 1921, there was pending in the Department of the Interior for action by Fall as Secretary a petition of the Petroleum Company praying for reduction of the royalty of $55\frac{1}{2}$ per cent reserved to the United States in the lease of July 12, 1921, of certain land in Naval Reserve No. 1. At the same time there was pending before the Department of the Interior a proposition by the Transport Company that in consideration of the receipt of royalty oils by said company and the granting of further leases of lands in Naval Reserve No. 1, the company would agree to erect certain storage tank facilities at Pearl Harbor, Hawaii, and fill the

same with fuel oil. On November 28, 1921, Doheny, on behalf of the Transport Company, wrote to Fall that in view of the cost of fuel oil, the cost of delivery of 1,485,000 barrels at Pearl Harbor would be \$2,821,500, which, added to the cost of constructing the necessary tanks to store the same, would make a total of \$3,360,420, and that to pay the contractor for both tanks and oil in royalty accrued oil from the Naval Reserve it would require 2,973,823 barrels. The letter suggests that the matter be turned over to First Assistant Secretary Finney, to arrange the details with Rear Admiral Robison during Secretary's Fall's proposed absence. On the following day Fall wrote to Admiral Robison, submitting to him Doheny's letter and saying: "Should you think best to accept this proposition, then of course it would be necessary in my judgment to turn over to Colonel Doheny if we can do so, leases upon further wells or area in the naval reserve in which he is now drilling. If this is done, it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American. * * * The two companies named are pumping their wells and so of course they are not making any money, but will experience a loss in the payment of the fifty five per cent royalty to the Government. If you approve the proposition, will you kindly indicate such approval by simple endorsement upon Col. Doheny's letter to myself signed by yourself. Your simple O. K. will be sufficient." On Novem-

ber 30, 1921, Fall was ready and desirous to consummate a contract with the Transport Company along the lines outlined in the two letters just referred to, which letters expressed and implied an understanding and agreement between Fall as Secretary of the Interior, and Doheny as executive and managing officer of the Transport Company, that Fall, upon the execution of the contracts as suggested in the letter of November 28, 1921, would grant to that corporation further and additional leases in Naval Petroleum Reserve No. 1 in consideration of the construction of storage facilities for 1,485,000 barrels of fuel oil at Pearl Harbor and filling of the same with fuel oil in exchange for royalty crude oil due the United States from existing leases and further leases agreed to be made in the naval petroleum reserves.

Prior to November 30, 1921, Fall and Doheny discussed a proposal that Doheny should advance and deliver to Fall the sum of \$100,000 for the personal use of the latter, and Doheny agreed to furnish said sum when Fall should need it, and on that date, Doheny, then being in New York City, did at the request of Fall send to him at Washington \$100,000, not in the usual manner of business transactions but in currency obtained from a bank by the use of the check of Doheny's son. The currency was "carried in a satchel" by Doheny's son from New York to Washington and by him delivered to Fall, but no entry of the withdrawal of said currency appears in the account of Edward L. Doheny with the bank on which the

check was drawn, and no entry of said advance or of any personal transactions connected therewith between Fall and Doheny was ever made a matter of record in the books of the latter or of either of the defendant corporations, but on November 30, 1921, Fall handed to Doheny's son, who delivered the same to his father, a note payable on demand with interest after date in the sum of \$100,000 to said Doheny at New York or Los Angeles, California, value received. No sum, however, either on account of principal or interest has been paid by Fall to Doheny on account of said note or said money so advanced. Within a few weeks after receiving the note Fall's signature was torn therefrom by Doheny and said note remains so torn. The purpose of so tearing the note was that it might not in the hands of third parties be an enforceable obligation against Fall.

On or before December 1, 1921, Fall issued instructions to his subordinates in the Department of the Interior that the Petroleum Company's petition for the reduction of royalties under lease of July 12, 1921, be refused and that instead thereof the company should as relief be granted a lease at regulation Interior Department royalties in Section 1, Township 30 South, Range 24 East, Kern County, California, in Naval Reserve No. 1. From January 27, 1922, to April 15, 1922, Fall knew that the Transport Company would make a bid to construct storage tankage facilities at Pearl Harbor and fill the same with fuel oil in consideration of the delivery to it of royalty oil of the United States and in consideration that it be assured of further

leases in Naval Reserve No. 1, and that the bid to be named by said corporation in construction of storage facilities and filling the same with fuel oil would be at cost, but he knew that the bid would involve the granting to said corporation of further oil and gas leases of the land within the said Naval Reserve No. 1. Aside from certain officers and agents of the United States and those operating the corporation, no others knew that the corporation would bid at cost for the construction and the filling of said storage facilities, nor were any informed by Fall or by any person on behalf of the United States that a bid conditioned upon the assurance to the bidder of further leases in Naval Petroleum Reserve No. 1 or a preferential right to leases therein would be considered.

Due to Fall's interest in furthering a contract with the Transport Company for constructing and filling storage tank facilities at Pearl Harbor and granting such further leases, the said corporation and its engineering representatives were from December, 1921, to April 15, 1922, kept in close touch with the development of the plans for constructing the tankage facilities and had opportunities for conference and advice from the officers and employees of the United States which no other bidder was afforded. The only other oil companies conferred with by the officers of the United States concerning the project at Pearl Harbor and the proposed contract were the Standard Oil Co. of California, the General Petroleum Co., the Associated Oil Co., the Pacific Oil Co., and the Union Oil Co. of California. Prior to April 15, 1922,

Fall knew that the General Petroleum Co. considered the proposed contract illegal and would not submit a bid, accordingly no invitations for proposals were sent to it. Fall also knew that the counsel for the Standard Oil Co. was of the opinion that the proposed contract was illegal and had written an opinion to that effect, and Fall knew that said company would not submit a bid. He knew or could have known prior to April 15, 1922, that the Union Oil Co. of California had not been asked to submit a bid. He knew prior to April 15, 1922, that the Associated Oil Company would not submit a bid except upon condition that authority be obtained from Congress. He knew prior to April 15, 1922, that invitations had been furnished to two construction companies but he was of the opinion and so stated, that it was impossible for construction companies to make bids for the reason that the construction would have to be paid for by delivery of royalty oils belonging to the United States. On April 15, 1922, the bids were opened. The Associated Oil Company's bid was conditioned upon Congressional action approving the contract. A proposal from the Standard Oil Co. of California applied only to the furnishing of fuel oil. Aside from these, the only bids were those of the Transport Company. That company submitted two bids marked "A" and "B." In proposal "B" a smaller lump sum in barrels of crude royalty was named than in proposal "A." It agreed that if the contractor's actual cost of construction were less than a mentioned stipulated amount, any sav-

ing below that stipulated amount would be credited to the Government, and the proposal was conditioned upon the granting by the United States of a preferential right to the bidder to become the lessee in all leases thereafter to be granted by the United States for recovery of oil and gas in Naval Petroleum Reserve No. 1. No other bidder was invited to compete on the terms mentioned in proposal "B," or upon any terms granting preferential rights to leases, and no person or corporation was advised that any bid would be received for doing the construction work at cost.

Fall was not present at the opening of the proposals. When he left Washington on April 13, 1922, he gave instructions to his subordinates that no bid should be accepted and no contract awarded without his first being informed and without his consent thereto. On April 18, 1922, Finney, the Acting Secretary of the Interior, telegraphed to Fall advising him that he and Admiral Robison recommended the acceptance of said proposal "B," and on the same day Fall telegraphed his consent thereto. Finney notified the Transport Company of the acceptance of its proposal "B," but before the contract was executed the vice-president of that corporation stated to Finney that his company did not desire to proceed further unless the United States would agree that within twelve months from the date of the contract it would grant to the corporation a lease or leases on some portion of the lands within Naval Reserve No. 1. On April 20, 1922, Ambrose, chief petroleum technologist of the Bureau of Mines of the Department of the Interior,

was sent with documents and papers relating to the contract to New Mexico to consult with Fall. On April 23, 1922, Fall telegraphed instructions to Finney to execute the contract. One of the matters about which Ambrose was instructed to confer with Fall was the question whether Denby, Secretary of the Navy, should be made a party to the proposed contract, and on April 23, 1922, Fall by telegraph answered in the affirmative. The question whether the Secretary of the Navy should be made a party to the agreement or whether the executive order of May 31, 1921, had any legal force and effect, was originally raised by Cotter, vice-president and attorney of the Transport Company. He refused to permit his company to enter into the contract unless the Secretary of the Navy were made a party thereto and signed the same.

From the inception of negotiations concerning the contract for the erection of storage facilities and filling the same with fuel oil Fall kept in touch with the matter and no question of policy or action of importance was determined without his consent. The condition of proposal "B" touching a preferential right to leases was inserted for the express purpose of preventing any other company from having an opportunity to obtain leases in said naval reserve and so that the said bidder might be able to eliminate competition for such leases as the United States might thereafter decide to make. Before the contract was executed Finney and Denby wrote to Cotter that the Department of the Interior would agree to grant to his company within one year from the date of a contract for the

Pearl Harbor project, leases to drill on the NE. $\frac{1}{4}$ of Sec. 3, T. 31 S., R. 24 E., and the strip of land lying in the E. $\frac{1}{2}$ of S. 34, T. 30 S., R. 24 E., and specifying the rate of royalty that would be charged thereon. The guaranty of certain specified leases in that letter was not necessary nor was it necessary to make the lease of June 5, 1922, to prevent drainage. The purpose of the guaranty of certain leases in the letter of April 25, 1922, was to assure the production of additional royalty oil to be used in payment for the construction of storage tankage facilities at Pearl Harbor and filling the same with fuel oil. The posted field price of crude oil in California declined rapidly after making the contract of April 25, 1922. In the autumn of 1922 Doheny was in consultation with Fall concerning a proposal that the Transport Company should at once become lessee of certain areas in Naval Reserve No. 1 and in consideration thereof should agree to do for the United States certain things mentioned in a written proposition. The proposal was reduced to writing by Doheny and delivered to Fall some time in October or November. Fall delivered it to certain other officers and employees of the United States with his approval. Doheny, in a subsequent written proposal, enlarged his proposition and made further suggestions as to areas to be leased and the consideration which his company would give therefor. He and Fall conferred together concerning the schedules of royalty to be inserted in the proposed lease which was to be made to the Petroleum Company with the result that they agreed upon a schedule of royalties recommended by Fall, and expressed

in the lease of December 11, 1922. That lease was arranged by private negotiation and no competition of any kind was had in the making of it and no other oil company was invited to submit a proposal for a lease, although at least one other oil company would have been interested in the matter. Some time prior to the making of that lease and down to October, 1922, Fall and other officers and employees of the United States, who were in close touch with him in the administration of the naval petroleum reserves, stated to persons making inquiry for leases in the Naval Reserve No. 1 that it was not the intention of the Department of the Interior or of the United States to make any lease or to drill in Naval Reserve No. 1 except for purely defensive purposes, and that no immediate leasing or drilling was in contemplation. So far as Fall was concerned those representations were false and untrue and by him known so to be. In February, 1922, an agreement was made by the United States with the Pacific Oil Co. that no drilling should be done by either party except on six months notice to the other party on certain lands in Sections 27, 28, 29, 30, 31, and on all of Sections 32 and 33 and the W. $\frac{1}{2}$ of 34, T. 30 S., R. 24 E., and on portions of Sections 3, 4, 5 and 6 in T. 31 S., R. 24 E., and in October, 1922, a similar agreement was made as to S. 31, T. 30 S., R. 24 E., and S. 36, T. 30 S., R. 23 E. Both agreements are still in force. There was no necessity on account of threatened drainage, to make the lease of December 11, 1922, at the time when it was made. At that time the plans for construction work at Pearl Harbor had

not been prepared, nor were they prepared until January 7, 1922. The contract of April 25, 1922, is a contract for the construction of a reserve fuel depot at Pearl Harbor and filling the same with fuel oil. The contract of December 11, 1922, contains an agreement for the erection of two reserve fuel depots for the Navy at Pearl Harbor and filling the same with certain petroleum products.

At the time when Doheny paid Fall the \$100,000 it was understood by him and Fall that the latter need not repay said sum or any part thereof to Doheny. Doheny expected that if Fall did not sell or turn over certain ranch land owned by him or to be acquired by him in New Mexico, Doheny would cause the Transport Company to employ Fall at a salary sufficiently large to enable him out of one-half thereof to pay off said amount in five or six years. At the time of said payment to Fall Doheny knew that Fall expected to leave the service of the Government and to accept employment with one of his companies or both, through his, Doheny's procurement. Doheny and Fall acted in co-operation and collusion with respect to the royalties being paid and to be paid on subsequent leases by the defendant corporations, and the royalties stipulated in the leases were fixed, arranged and settled by Fall and Doheny.

By the contracts of April 25, 1922, and December 11, 1922, the Secretary of the Navy surrendered and delegated to the Secretary of the Interior vital, essential and discretionary rights, powers and duties which by the Congress of the United States were

conferred exclusively and solely upon the Secretary of the Navy.

There have been constructed and completed under the direction of the defendants at Pearl Harbor all of the fuel oil storage facilities mentioned in the agreement of April 25, 1922, and there have been constructed and completed under the direction of the defendants much of the additional storage facilities for crude oil products mentioned in the agreement of December 11, 1922, and such projects and property are of benefit and value to the United States and have been constructed economically and without waste or extravagance and are now available for use by the United States, and are on property of the United States at Pearl Harbor, and the money expended for the construction thereof has been expended by the defendants upon the property of the United States and under the supervision and inspection of duly appointed officers of the Navy, and said property so constructed upon the property of the United States should be retained and kept thereon.

At the time of the conclusion of the trial all the additional storage facilities for crude oil products required by the agreement of December 11, 1922, had been completed and there had been delivered into the possession of the United States at Pearl Harbor and into said storage facilities 1,453,274.94 barrels of fuel oil of the quality required by the agreement and the same was accepted by the United States and is retained by it and is of value and benefit to the United States equal to the cost

of furnishing and transporting the same. The Court further found that the lessee in compliance with the terms of the leases of June 5 and December 11, 1922, did expend sums of money in exploration, exploitation and development of the lands referred to therein and in producing and maintaining production of oil, gas and gasoline therefrom and in making permanent improvements and facilities upon said lands necessary to comply with the terms of said leases, and said expenditures were made economically and without waste and with the knowledge and under the general supervision of duly appointed officials of the United States, and the result of said expenditures is and will be of benefit and value to the United States equal to the amount thereof.

From all of said findings of fact the Court drew the following conclusions of law: that the payment of \$100,000 by Doheny to Fall was *contra bonos mores* and against public policy; that it is immaterial whether the directors and stockholders of the Transport Company knew of said payment; that the making of said payment constitutes a fraud upon the United States and renders voidable all contracts and transactions made subsequent thereto between said corporation or its codefendant and the United States; that Doheny and Fall conspired and confederated for the making of certain contracts and agreements of great benefit and advantage to the Transport Company, to wit: the contract of April 25, 1922, Exhibit "B," of the complaint, the contract of April 25, 1922,

Exhibit "E," the lease of June 5, 1922, the contract of December 11, 1922, and the lease of December 11, 1922; that the contract of April 25, 1922, Exhibit "B," was not let upon competitive bidding; that that contract and the contract of December 11, 1922, Exhibit "C," the lease of June 5, 1922, and the lease of December 11, 1922, are voidable at the option of the United States and should be delivered up to be cancelled; that the contract of April 25, 1922, Exhibit "B," and the contract of December 11, 1922, are null and void and of no effect because they constitute unlawful delegation of authority to the Secretary of the Interior contrary to the terms and provisions of the Act of June 4, 1920, and they should be surrendered for cancellation; that the executive order of May 31, 1921, is, in so far as it attempts to transfer the discretionary power of the Secretary of the Navy to the Secretary of the Interior, ineffectual and in excess of the executive power of the President; that the lease of June 5, 1922, was part of the consideration of an illegal contract, to wit: the contract of April 25, 1922, Exhibit "B," and the same should be delivered up for cancellation; that the lease of December 11, 1922, constituted part of the consideration given by the United States for the contract of December 11, 1922, which contract being wholly void and illegal, the said lease also is void and illegal and should be delivered up for cancellation; that the defendants should cease to trespass upon the lands of the United States and forthwith surren-

der possession thereof and be enjoined and restrained from further operations or activities of any kind on said lands and from removing any materials, tools, machinery, etc., therefrom.

In view of the equities between the parties, the Trial Court concluded that the defendants should be paid for and allowed credit for moneys actually expended in the construction of the storage facilities at Pearl Harbor and that a complete account should be taken between the plaintiff and the defendants to determine the total and gross amount of oil petroleum products the defendants have taken from the lands covered by the lease of June 5, 1922, and the lease of December 11, 1922, and the money value of such products so taken, and upon ascertaining the total gross quantity of such products and of the pecuniary value thereof, such sum to be found due, if any, upon such accounting, should be paid by the defendants to the plaintiff, and that in such accounting the defendants be entitled to be credited with the cost price of the storage facilities so completed and installed at Pearl Harbor, together with the cost price of fuel oil contents placed therein and the actual expenditures of money in drilling and putting on production in wells drilled under the leases of June 5, 1922, and December 11, 1922, and that the costs of the suit should be paid by the defendants.

The defendants take their appeal from that portion of the decree which awards the plaintiff equitable relief. The plaintiff takes its cross-appeal from that portion of the decree which

awards the defendants credit for moneys expended under the contracts and leases and directs an accounting.

GILBERT, Circuit Judge, after stating the case:

The defendants assign error to certain of the findings of fact of the Trial Court, certain of the rulings of that court upon the admission of evidence, and certain of the Court's conclusions of law. We find no ground for disturbing the findings of fact which we deem essential to the decision of the case, and while the evidence may be insufficient to support certain contested findings the disputed facts, in view of our conclusions upon the law applicable to the case, become of little importance.

Particular objection is made to the admission in evidence of statements made by Doheny before the Senate Committee. Those statements were offered in evidence after Doheny had been called as a witness for the plaintiff to testify as to the \$100,000 payment to Fall by him and had availed himself of his constitutional privilege by declining to answer on the ground that his testimony might tend to incriminate him. The offer in evidence of the statements so made before the Senate Committee was accompanied with a proffer of proof that Doheny had voluntarily appeared and made the statements before the Committee. Objection was interposed on the ground that the said statements were not shown to have been made as part of any transaction of the defendant corporations or as part of the *res gestae* of any corporate trans-

action or under circumstances showing that Doheny had any express or implied authority to appear before the Senate Committee and speak for said corporations. The Court held that at the time of making the declarations Doheny was acting within the scope of his authority as an agent of his corporations and admitted the testimony. There having been a preliminary showing before the Court that the leases were negotiated by Doheny on behalf of the defendants and as their agent and that those matters were the very matters brought for investigation before the Senate Committee, we are not convinced that the Court's ruling was erroneous. There can be no question but that the declarations of an officer or agent of a corporation, even though they consist of a narrative of past facts, may, under appropriate circumstances, be admitted in evidence against the corporation, nor does the admissibility of such declarations necessarily depend upon the length of time that has elapsed between the occurrences and the declarations. 10 R. C. L. 978. Clearly, if any officer of the defendant corporations was authorized to bind them by declarations after the event, it was Doheny. As president of both companies he had negotiated the agreements and had executed the same. The scheme to pay for tankage facilities construction and fuel oil by Government royalty oil originated with him and Fall. He was the dominating figure and the administrative officer by whom the business of the corporations was conducted and acts done by him within the

scope of the corporate powers were presumably duly authorized. At the time when the declarations were made there were pending transactions between the plaintiff and the defendants to which the declarations were pertinent, for the contracts and leases were in active operation and their validity was being investigated by the Senate Committee. The defendants were interested in vindicating the contracts and it was to their interest to show that the \$100,000 transaction was a purely personal one and in no way related to the procurement of the contracts. The declarations were also against the interest of the declarant and no other means of obtaining the evidence were available to the plaintiff. Among the cases tending to support the ruling of the Trial Court are *Chicago vs. Greer*, 9 Wall. 726; *Xenia Bank vs. Stewart*, 114 U. S. 224; *Fidelity & Deposit Co. vs. Courtney*, 186 U. S. 342; *Joslyn vs. Cadillac Automobile Co.*, 177 Fed. 863; *C. B. & Q. R. R. Co. vs. Kuleman*, 18 Ill. 298. In *Rosenberger vs. H. E. Wilcox M. Co.*, 145 Minn. 408, the Court said: "The fact that this transaction occurred some time after the contract of sale of the stock, and that the statement was an admission as to facts existing when the contract was made, is not decisive. An agent of a corporation, if acting within the scope of his authority, may make an admission in behalf of the corporation as to a past transaction, just as a natural person or his authorized agent may do so."

It is contended that the Act of June 4, 1920, conferred upon the Secretary of the Navy ample

authority to enter into the exchange contracts of April and December, 1922. We cannot think that by the use of the word "exchange" in the act which was a rider to the appropriation bill of June 4, 1920, it was the intention of Congress to bestow upon the Secretary of the Navy power to dispose of the oil products of the naval reserves in the manner in which it was done in the contracts and leases here in question. The act, after giving the Secretary possession of the naval reserve lands, etc., authorized him "to conserve, develop, use and operate the same in his discretion directly, or by contract, lease, or otherwise, and to use, store, exchange or sell the oil and gas products thereof, and those from all royalty oil from lands within the reserves, for the benefit of the United States. * * * Provided further: that such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed \$500,000, are hereby made available for this purpose until July 1, 1922." The power to lease, following as it does the authority to conserve, was evidently to be used as a protective measure to prevent drainage of the naval reserve lands from adjacent oil drilling. The power to sell so conferred necessarily carried with it the legal obligation to turn into the Treasury of the United States the proceeds of sales. If anywhere in the act there is authority to justify the execution of the contracts and leases in question here, it must be found in the word "exchange."

The opinion of the Judge Advocate General of the Navy was that the authority thus granted to exchange was "unrestricted," which could only mean that the Secretary of the Navy could exchange all oil in the naval reserve and all royalty oils for any purpose for which he saw fit. The defendants do not go so far as that. They assume that the authority to exchange is limited to exchanges for fuel reserve purposes. We find nothing in the act which imposes such a limitation and we think it clear that the word "exchange" embraces either the broad authority which was found by the Judge Advocate General or that the intention was to limit the exchange by the words of the accompanying proviso "not exceeding \$500,000," and that the exchange intended was an exchange of crude oil for fuel oil for the current use of the Navy, the then existing depots of fuel oil for current use having been authorized by express acts of Congress. The Act of June 4, 1920, bestows no express authority to create fuel depots. If the power to exchange be extended beyond exchange for current fuel oil or facilities for the storage of royalty oils not to exceed \$500,000, there is no limit to it. There can be no middle ground. Either the intention was that the power was thus to be limited, or it was absolutely without limit, and under it the Secretary of the Navy might have exchanged crude oil for battleships or airplanes, or anything else which he deemed to be of benefit to the Navy, and all this in addition to the millions contracted to be expended for the storage facili-

ties at Pearl Harbor and the filling of the same, the total estimate for which, according to the testimony of Admiral Robison, was \$103,000,000. As early as August 31, 1842, Congress, under its constitutional authority to provide and maintain a Navy, enacted that "The Secretary of the Navy may establish in such places as he may deem necessary suitable depots of coal and other fuel for the supply of steamships of war." Rev. Stats. 1552. On March 4, 1913, 37 Stats. 893, on account of the establishment of fuel depots by the Secretary of the Navy which had subsequently been abandoned, Congress, on the recommendation of the House Committee on Naval Affairs, "in the interest of economy" repealed Section 1552, R. S., and at the same time made an appropriation for the completion of a coaling plant and oil tanks at Pearl Harbor. Thereafter annual appropriations were made for fuel oil storage at various points, the largest appropriation for that purpose being \$200,000. For the year 1921 an appropriation of \$1,000,000 for storing oil at Pearl Harbor was requested by the Chief of the Bureau of Yards and Docks of the Navy, but the request was denied, and no appropriation for that purpose was made for that year. Nor was any made for any subsequent year, obviously for the reason that none was applied for.

It is not conceivable that by the rider to the appropriation bill Congress intended in that casual way to surrender its legislative functions as to the control and disposition of the naval oil reserves

and the establishment of fuel oil depots for the Navy, to revolutionize the established method of transacting the public business of the United States, and to repeal, so far as they relate to the oil reserves, Sections 3732 and 3733, Rev. Stats., and Sections 6884, 6885, 6886 and 6873, Compiled Stats. of 1918, which forbid the making of contracts to bind the Government beyond the amount appropriated therefor unless otherwise specifically provided, and Section 3709, Rev. Stats., which makes competitive bidding and advertising indispensable to the making of all such contracts, and Sections 3617 and 3618 of Rev. Stats., which make it obligatory to turn into the Treasury of the United States all proceeds of sales of royalty oils as was done prior to June 4, 1920, and as was expressly provided by the Act of February 25, 1920. If such had been the intention it is but reasonable to assume that it would have been expressed in terms so clear as to exclude all doubt. The construction placed upon the act by the officers of the Government to whom were delegated the powers conferred thereby is of no value as indicating the meaning of the act. The evidence is that the Secretary of the Interior and the representatives of the Department of the Navy, who were most interested and active in furthering the Pearl Harbor scheme, were doubtful of their authority to engage in it and intentionally refrained from giving out information concerning the same and withheld from members of Congress knowledge of their action through fear that they

would encounter trouble from Congress. Clearly any such contract is illegal unless made in pursuance of authority previously given by Congress. It is no answer to these considerations to say that the contracts were beneficial and that the United States received full value for every dollar expended thereunder. Said the Court in *Filor vs. United States*, 76 U. S. 45: "The officers at Key West did not represent the United States except in their military capacity, though assuming to do so. In signing the agreement and in taking possession of the premises claimed by the petitioners they acted on their own responsibility. Their unauthorized acts cannot estop the Government from insisting upon their invalidity, however beneficial they may have proved to the United States. If the petitioners are entitled to compensation for the use of the property, they must seek it from Congress."

The defendants, referring to the fact that the record contains no finding that the contracts or leases were harmful or that the Government was damaged thereby, contend that the suit may not be maintained without proof of pecuniary damage to the United States. To that we cannot agree. As indicating pecuniary damage the Trial Court directed attention to the fact that the Government had for a period of fifteen years parted with possession of the oil and petroleum products of its naval oil reserves and had been deprived of its right to make more valuable contracts and leases than those which were made with the defendants and to obtain the

benefits of competition for leases, and passing by those considerations as not necessarily pertinent to the case, the Court based its decree upon the right of the United States to be restored to the use and possession of its naval oil reserves, which through fraud, undue favoritism and misconduct of its officers had been relinquished to private enterprises. We think the ground so taken by the Trial Court was justified. Applicable to this question are the authorities cited later in this opinion on the question of the obligation of the United States to accord the defendants equity. In *Heckman vs. United States*, 224 U. S. 413, 439, upon the right of the United States to invoke the equity jurisdiction of its courts, the Court said: "It was not essential that it should have a pecuniary interest in the controversy." In *United States vs. Carter*, 217 U. S. 286, it was held that the fact that the United States had suffered no pecuniary damage from a fraud committed against it did not prevent recovery. In *Hammerschmidt vs. United States*, 265 U. S. 182, 188, the Chief Justice said: "To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the

overreaching of those charged with carrying out the governmental intention."

We are unable to affirm the court below in holding that the United States, in order to obtain the relief which it sought, is required to credit the defendants with the sums which they expended under the leases and contract, and in holding applicable to the case the maxim that he who seeks equity must do equity. That maxim is as old as equity itself and is of almost universal application. It means that he who seeks the aid of an equitable court subjects himself to the imposition of such terms as the settled principles of equity require. But the maxim is only a guiding principle and not an exact rule governing all cases. *Hanson vs. Keating*, 8 Jur. 949. In that case the Vice-Chancellor said: "It is a rule which *per se* can by no possibility decide what the rights of the defendant are. It only raises the question what equity, if any, the defendant has against the plaintiff in the circumstances of the case to which the rule is sought to be applied." And it is held that the maxim is restricted to cases where the plaintiff is wholly without remedy at law and is entirely dependent upon a suit in equity for relief. *Gilliat vs. Lynch*, 2 Leigh, 493; *Scott vs. Scott*, 18 Gratt. 150; *Dranga vs. Rowe*, 127 Cal. 506. Here the plaintiff had a remedy at law but resorted to equity to avoid a multiplicity of suits. It is well settled also that the maxim is not applicable in the case of a suit by the United States to vindicate its dominion over the public lands and to avail itself of substantial rights under statutory provisions.

In *United States vs. Trinidad Coal Co.*, 137 U. S. 160, 170, Mr. Justice Harlan said: "It the defendant is entitled, upon a cancellation of the patents fraudulently and illegally obtained from the United States, in the name of others for its benefit, to a return of the moneys furnished to its agents in order to procure such patents, we must assume that Congress will make an appropriation for that purpose, when it becomes necessary to do so. The proposition that the defendant having violated a public statute in obtaining public lands that were dedicated to other purposes, cannot be required to surrender them until it has been reimbursed the amount expended by it in procuring the legal title, is not within the reason of the ordinary rule that one who seeks equity must do equity; and if sustained would interfere with the prompt and efficient administration of the public domain." In *Heckman vs. United States*, 224 U. S. 413, 447, Mr. Justice Hughes, answering the contention that there should be equitable restoration before enforcement of the law in a case involving the violation of statutory restrictions on the alienation of Indian lands, said: "The effectiveness of the acts of Congress is not thus to be destroyed. The restrictions were set forth in public laws and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that they should keep the land if the purchase price is not repaid, and thus frustrate the policy of the statute." In *Causey vs. United States*, 240 U. S. 399, 402, Mr. Justice Van Devanter, after observing

that the public lands are held in trust for all the people and that in providing for their disposal Congress has sought to advance the interests of the whole country by opening them to entry under restrictions, said: "And when a suit is brought to annul a patent obtained in violation of these restrictions the purpose is not merely to regain the title, but also to enforce a public statute and maintain the policy underlying it. Such a suit is not within the reason of the ordinary rule that a vendor suing to annul a sale fraudulently induced must offer and be ready to return the consideration received. That rule, if applied, would tend to frustrate the policy of the public land laws; and so it is held that the wrongdoer must restore the title unlawfully obtained and abide the judgment of Congress as to whether the consideration paid shall be refunded." In line with the foregoing decisions are *Washington Sec. Co. vs. United States*, 234 U. S. 76; *United States vs. Poland*, 251 U. S. 221, and *Diamond Coke & Coal Co. vs. Payne*, 271 Fed. 362.

To the proposition that the equitable claims of the Government appeal to the conscience of a chancellor with no greater force than do those of private citizens under like circumstances, the defendants cite among other cases, *United States vs. Stinson*, 197 U. S. 200, and *United States vs. The Thekla*, 266 U. S. 328. In the first of these cases a suit was brought by the United States to set aside patents alleged to have been fraudulently acquired. The decision was that in such a suit the

Government is subjected to the same rules as is an individual respecting the burden of proof, quantity and character of evidence, and presumptions of law and fact, and that in a case of that kind equity will protect the rights of an innocent purchaser for value and without notice. In the second case a libel had been filed by the owners of the "Luckenbach" against the bark "Thekla" for damages resulting from a collision. The owners of the bark filed a cross-libel. The United States became a party libellant as owner *pro hac vice* of the "Luckenbach" and made claim thereto and filed a stipulation to pay any amount awarded against that vessel by the final decree. Concerning the effect of the claim and the stipulation the Supreme Court said: "When the United States comes into Court to assert a claim it so far takes the position of a private tutor as to agree by implication that justice may be done with regard to the subject matter. The absence of legal liability in a case where but for its sovereignty it would be liable does not destroy the justice of the claim against it." The propositions involved in those cases are not in dispute here. But the defendants cite also cases such as *United States vs. Debell*, 227 Fed. 775, and *United States vs. Midway Northern Oil Co.*, 232 Fed. 619, which apply the equitable maxim to the United States when it resorts to equity in suits of the kind there involved. There can be no doubt that where a patent to public land has been acquired by fraud and the patentee has conveyed the land to an innocent purchaser for value the remedy

of the United States is to resort to a suit in equity to set aside the patent, the patent having been issued, in due and proper form and under authority of law as attested by the action of the officials of the Land Office. In so doing the Government being required to seek equitable relief, must as incident thereto deal equitably with defendants who in good faith have acquired title from the patentee and there can be no doubt that in a suit brought by the United States for accounting against trespassers who entered upon public lands in good faith through a mistake of law and in the belief that they could acquire title under the mineral laws, the plaintiff will be required to do equity. But in the present case, although the suit is in form a suit to cancel leases of the public domain, the United States is not seeking equity. It is but fulfilling its duty to protect the public domain and to compel compliance with fundamental laws of the United States. To do what the defendants here claim to be equity would be to require the Court to exercise functions which belong to the legislative branch of the Government, to legalize demands founded upon violation of the laws of the United States and to make judicial disposition of the public resources of the United States.

To hold in the present case that the defendants have equities which demand the protection of the Court would be to ignore the fundamental distinction between cases brought to determine rights as between the United States and citizens depending upon contracts made under the authority

of the laws of the United States and cases in which the contracts have been made without authority of law or in violation thereof. In *The Floyd Acceptances*, 74 U. S. 666, 680, it was said: "Our statute books are filled with acts authorizing the making of contracts with the Government through its various officers and departments, but, in every instance the person entering into such a contract must look to the statute under which it is made, and see for himself that his contract comes within the terms of the law." That doctrine is exemplified in numerous decisions: "*Whiteside vs. United States*, 93 U. S. 247; *Hooe vs. United States*, 218 U. S. 322; *Chase vs. United States*, 155 U. S. 489; *Sutton vs. United States*, 256 U. S. 575.

Credit for moneys expended by the Petroleum Company in drilling and operating oil wells and making improvements on Naval Reserve No. 1 could be allowed only on the theory that said corporation committed innocent trespass upon the naval reserve and in good faith expended said money and made said improvements. The *mala fides* of the trespasses however, follows from the findings of the court below. That such credits could lawfully be decreed only in a case where the trespass upon the lands was innocently made in good faith is well established. *Pine River Logging Co. vs. United States*, 186 U. S. 279; *Wooden Ware Co. vs. United States*, 106 U. S. 432; *Union Naval Stores vs. United States*, 240 U. S. 284.

The decree of the court below, so far as it awards affirmative relief to the United States in ordering

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the cancellation of the leases and contracts and commands the defendants to surrender possession of the lands mentioned in the bill of complaint and enjoins them against trespassing thereon or removing property therefrom, is affirmed. That portion of the decree which directs that the defendants be credited with the cost price of the storage facilities for crude oil products at Pearl Harbor and the cost price of the fuel oil contents thereof and the actual expenditures of money in drilling and putting on production any wells drilled under the leases is reversed, and the cause is remanded to the court below for further proceedings in accordance with the foregoing opinion.

[Endorsed]: Filed Jan. 4, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PETRO-
LEUM & TRANSPORT COMPANY,
a Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal and cross-appeal from the District Court of the United States for the Southern District of California, Northern Division.

This cause came on to be heard on transcript of the record from the District Court of the United States for the Southern District of California, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause, so far as it awards affirmative relief to the United States in ordering the cancellation of the leases and contracts and commands the defendants to surrender possession of the lands mentioned in the bill of complaint and enjoins them against trespassing thereon or removing property therefrom is affirmed. That portion of the decree which directs that the defendants be credited with the cost price of the storage facilities for crude oil products at Pearl Harbor and the cost price of the fuel oil contents thereof and the actual expenditures of money in drilling and putting on production any wells drilled under the leases is reversed, and that this cause be, and hereby is remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

[Endorsed]: Filed and entered January 4, 1926.
F. D. Monekton, Clerk. By Paul P. O'Brien,
Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the first day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY, a Corporation, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY, a Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

ORDER DENYING PETITION FOR A RE-HEARING.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William H. Hunt and Frank H. Rudkin, Circuit Judges, before whom the cause was heard, ORDERED that the petition, filed on January 26, 1926, on behalf of the appellants

and cross-appellees for a rehearing of the above-entitled cause be, and hereby is denied.

Before the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM & TRANSPORT COMPANY, a
Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,
Appellee and Cross-Appellant.

STIPULATION RE STAY OF MANDATE, ETC.

Counsel for the above-named parties

HEREBY CONSENT AND STIPULATE that
in the event that the petition for rehearing pre-
sented to the United States Circuit Court of Ap-
peals for the Ninth Circuit by above-named ap-
pellants and cross-appellees be denied, the issue of
the mandate of the said Court to the District Court
for the Southern District of California, Northern
Division, upon the appeal and cross-appeal decided
by the above-mentioned court on or about January
4th, 1926, be stayed until forty-five days after the
expiration of the five days after the determination
of such petition fixed by Rule 32 of the said Court;
and that an order may be entered by the said Court

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accordingly without further motion or other proceedings on the part of counsel.

FURTHER STIPULATED that the said order thus entered, shall provide that the said stay is granted on condition that a petition for certiorari be docketed within the said time in the office of the Clerk of the United States Supreme Court; and that in that event the issue of the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, be further stayed until after the Supreme Court of the United States shall pass upon and dispose of such petition for certiorari.

Dated, January 27th, 1926.

ATLEE POMERENE,

OWEN J. ROBERTS,

Solicitors for the Appellee and Cross-Appellant.

FREDERIC R. KELLOGG,

FRANK J. HOGAN,

Solicitors for the Appellants and Cross-Appellees.

JOS. J. COTTER.

HENRY O. MELVENY.

WALTER K. TULLER.

CHARLES WELLBORN.

OLIN WELLBORN, Jr.

DEAN EMERY.

HAROLD WALKER.

[Endorsed]: Stipulation Re Stay of Mandate, etc. Filed Feb. 3, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, et al.,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. Frederic R. Kellogg, counsel for the appellants and cross-appellees, and good cause therefor appearing, IT IS ORDERED that the issuance of the mandate of this Court under Rule 32 in the above-entitled cause be, and hereby is stayed until the petition to be made on behalf of the appellants and cross-appellees to the Supreme Court of the United States for the issuance of a writ of certiorari herein be disposed of, on condition that the said petition be docketed in the said Supreme Court on or before March 22, 1926.

WM. B. GILBERT,

Senior United States Circuit Judge.

Dated: San Francisco, California, February 1,
1926.

[Endorsed]: Filed Feb. 1, 1926. F. D. Monckton,
Clerk. By Paul P. O'Brien, Deputy Clerk.

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United States Circuit Court of Appeals for the
Ninth Circuit.

No. 4651.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM & TRANSPORT COMPANY, a
Corporation,

Appellants and Cross-Appellees,

vs.

UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

CERTIFICATE OF CLERK U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT TO RECORD CERTIFIED
UNDER RULE 35 OF THE REVISED
RULES OF THE SUPREME COURT OF
THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States
Circuit Court of Appeals for the Ninth Circuit, do
hereby certify the foregoing three volumes, num-
bered Vols. I, II, III, consisting of one thou-
sand five hundred and nineteen (1,519) pages,
numbered from and including 1 to and in-
cluding 1,519, to be a full, true and correct copy
of the entire record of the above-entitled case in
the said Circuit Court of Appeals, made pursuant
to request of counsel for the appellants and cross-
appellees, and certified under Rule 35 of the Revised
Rules of the Supreme Court of the United States,

vs. United States of America. 1521

as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 5th day of February, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 22, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1013)